No. 15-339

In The
Supreme Court of the United States

MICHAEL ROSS,

Petitioner,

v.

SHAIDON BLAKE,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

JOINT APPENDIX

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Relevant Docket Entries for the United States

U.S. District Court
District of Maryland (Greenbelt)
CIVIL DOCKET FOR CASE #: 8:09-cv-02367-AW

Blake v. Maynard et al

Date Filed	#	Docket Text
09/08/2009	1	COMPLAINT against Gary Maynard, Michael Stouffer, Micheal Ross, James Madigan, The Dept. of Corrections, State of Maryland, M.R.D.C.C., filed by Shaidon Blake. (Attachments: # 1 envelope)(bmh, Deputy Clerk) (Entered: 09/10/2009)
09/22/2009	3	ORDER dismissing claims against the Department of Corrections, State of Maryland, and MRDCC; directing the Plaintiff to forward $8.33 to the Clerk within 20 days as the initial partial filing fee and to make monthly payments on the remainder filing fee; granting 2 Plaintiff's Motion for Leave to Proceed in forma pauperis; directing Clerk to mail copies and withhold service; and directing Defendants to answer the complaint. Signed by Judge Alexander Williams, Jr on 9/22/09. (Attachments: # 1 service letters) (bmh, Deputy Clerk)(c/m 9/23/09) (Entered: 09/23/2009)
11/19/2009	6	ANSWER to 1 Complaint by Gary Maynard, Michael Stouffer, Micheal Ross, The Dept. of Corrections,

		State of Maryland, M.R.D.C.C.. (Attachments: # 1 Election for Jury Trial)(Bell, Glenn) (Entered: 11/19/2009)
09/09/2010	33	ORDER denying 16 Plaintiff's Motion to Compel; denying 17 Plaintiff's Motion for Summary Judgment without prejudice; granting 18 Defendants' Motion to Dismiss and denying as to Defendant Ross; and directing Clerk to appoint Counsel. Signed by Judge Alexander Williams, Jr on 9/9/10. (apl, Deputy Clerk)(c/m 9/20/10). (Entered: 09/10/2010)
11/17/2010	38	ORDER appointing Jay S. Brown as pro bono counsel to represent Plaintiff. Signed by Judge Alexander Williams, Jr on 11/16/2010. (kn, Deputy Clerk)(c/m 11/17/10)(c/m docket sheet, complaint, reimbursement form on 11/18/2010) (Russell, M). (Entered: 11/17/2010)
01/25/2011	49	ORDER DENYING 27 Plaintiff Shaidon Blake's Motion for Default Judgment on Defendant James Madigan and ORDERING Plaintiff to serve process upon Defendant James Madigan within **30 days** of this Order. Signed by Judge Alexander Williams, Jr on 1/24/2011. (kn, Deputy Clerk) (Entered: 01/25/2011)

03/14/2011	53	ANSWER to Complaint by James Madigan.(Sachse, Douglas) (Entered: 03/14/2011)
08/02/2011	66	Consent MOTION to Amend/Correct 6 Answer to Complaint by Micheal Ross. Responses due by 8/19/2011 (Attachments: # 1 Amended Answer, # 2 Comparison Amended Answer, #3 Text of Proposed Order)(Rice, Sarah) (Entered: (08/02/2011)
08/19/2011	73	ORDER GRANTING 71 Defendant Michael Ross's Motion to Amend This Court's Order of August 12, 2011. Signed by Judge Alexander Williams, Jr on 8/19/2011. (kns, Deputy Clerk) (Entered: 08/19/2011)
08/23/2011	74	MOTION to Strike *Certain of Defendant Ross's Affirmative Defenses* by Shaidon Blake. Responses due by 9/9/2011 (Attachments: # 1 Affidavit Claffee Declaration in Support of Motion to Strike)(Claffee, Scott) (Entered: 08/23/2011)
09/06/2011	75	RESPONSE in Opposition re 74 MOTION to Strike *Certain of Defendant Ross's Affirmative Defenses* filed by Micheal Ross. Replies due by 9/23/2011. (Attachments: # 1 Exhibit One, Electronic Correpondence of Counsel)(Rice, Sarah) (Entered: 09/06/2011)
09/22/2011	78	Consent MOTION to Amend/Correct 1 Complaint by Shaidon Blake.

		Responses due by 10/11/2011 (Attachments: #1 Plaintiff's Amended Complaint)(Eisenberg, Emily) (Entered: 09/22/2011)
09/27/2011	81	PAPERLESS ORDER granting 78 Motion to Amend/Correct. Signed by Judge Alexander Williams, Jr. on September 27, 2011. (vj, Chambers) (Entered: 09/27/2011)
10/06/2011	84	ANSWER to Complaint *(Amended)* by Micheal Ross.(Rice, Sarah) (Entered: 10/06/2011)
10/24/2011	87	MOTION to Strike Defendant Ross's Fifth Affirmative Defense by Shaidon Blake. Responses due by 11/10/2011 (Claffee, Scott) (Entered: 10/24/2011)
01/09/2012	94	MOTION for Summary Judgment by Micheal Ross. Responses due by 1/26/2012 (Attachments: # 1 Memorandum in Support, # 2 Exhibit 1 2011 Medical Records, # 3 Exhibit 2 Blake Deposition, # 4 Exhibit 3 Inmate Handbook Receipt Forms, # 5 Exhibit 4 Disciplinary Hearing Record, # 6 Exhibit 5 Ross Deposition, # 7 Exhibit 6 Madigan Deposition, # 8 Exhibit 7 Woodard Deposition, # 9 Exhibit 8 IIU Report, # 10 Exhibit 9 Inmate Handbook, # 11 Exhibit 10 DCD 185-002, # 12 Exhibit 11 DCD 185-003, # 13 Exhibit 12 Martiin Expert

		Report)(Rice, Sarah) Modified on 1/13/2012 (kns, Deputy Clerk)(Hard Copy rec'd 1/10/12). (Entered: 01/09/2012)
02/02/2012	96	RESPONSE in Opposition re 94 MOTION for Summary Judgment filed by Shaidon Blake. Replies due by 2/21/2012. (Attachments: # 1 Affidavit Declaration of Scott A. Claffee)(Claffee, Scott) (Entered: 02/02/2012)
05/10/2012	99	MEMORANDUM OPINION. Signed by Judge Alexander Williams, Jr on 5/10/2012. (kns, Deputy Clerk) (Entered: 05/10/2012)
05/10/2012	100	ORDER DENYING 87 Plaintiff's Motion to Strike; GRANTING 94 Defendant Ross's Motion for Summary Judgment and directing that the Clerk CLOSE the case. Signed by Judge Alexander Williams, Jr on 5/10/2012. (kns, Deputy Clerk) (Entered: 05/10/2012)
06/04/2012	101	MOTION for Reconsideration re 99 Memorandum Opinion, 100 Order on Motion to Strike, Order on Motion for Summary Judgment by Shaidon Blake. Responses due by 6/21/2012 (Claffee, Scott) (Entered: 06/04/2012)
10/16/2012	102	MEMORANDUM/ORDER scheduling a hearing on November 2, 2012 at 4:00 p.m. in Courtroom 4A,

		Greenbelt regarding 101 MOTION for Reconsideration re 99 Memorandum Opinion, 100 Order on Motion to Strike, Order on Motion for Summary Judgment filed by Shaidon Blake. Signed by Judge Alexander Williams, Jr on 10/15/2012. (kns, Deputy Clerk) (Entered: 10/16/2012)
11/02/2012	108	Motion Hearing held on 11/2/2012 re 101 MOTION for Reconsideration re 99 Memorandum Opinion, 100 Order on Motion to Strike, Order on Motion for Summary Judgment filed by Shaidon Blake before Judge Alexander Williams, Jr. (Court Reporter: Williams (4A) (esp, Deputy Clerk) (Entered: 11/02/2012)
11/14/2012	110	MEMORANDUM OPINION. Signed by Judge Alexander Williams, Jr on 11/14/2012. (kns, Deputy Clerk) (Entered: 11/14/2012)
02/28/2013	136	ORDER OF JUDGMENT in favor of Plaintiff Shaidon Blake against Defendant James Madigan in the amount of $50,000.00 (Fifty thousand dollars and no cents) for compensatory damages, with costs. Signed by Judge Alexander Williams, Jr on 2/27/2013. (kns, Deputy Clerk)(.17%) (Entered: 02/28/2013)
07/11/2013	147	ORDER GRANTING 138 Plaintiff's Motion for Attorney Fees and

		DENYING 139 Defendant Madigan's Motion for New Trial or, in the Alternative, to Alter or Amend the Judgment. Signed by Judge Alexander Williams, Jr on 7/10/2013. (kns, Deputy Clerk) Modified text on 7/11/2013 (kns, Deputy Clerk). (Entered: 07/11/2013)
08/09/2013	149	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 148 Notice of Appeal. IMPORTANT NOTICE: To access forms which you are required to file with the United States Court of Appeals for the Fourth Circuit please go to http://www.ca4.uscourts.gov and click on Forms &Notices. (rss, Deputy Clerk) (Entered: 08/09/2013)

Relevant Docket Entries for the United States Court of Appeals for the Fourth Circuit

Court of Appeals Docket #: 13-7279

Shaidon Blake v. Michael Ross, Sgt.

08/09/2013	1	Case docketed. Originating case number: 8:09-cv-02367-AW. Case manager: DLett. [13-7279] (DL)
1/27/2015	45	ORAL ARGUMENT heard before the Honorable William B. Traxler, Jr., Roger L. Gregory and G. Steven Agee. Attorneys arguing case: Scott Matthew Noveck for Appellant Shaidon Blake and Ms. Sarah W. Rice for Appellee Micheal Ross. Courtroom Deputy: Sarah Carmichael. [999518234] [13-7279] (SAC)
5/21/2015	49	PUBLISHED AUTHORED OPINION filed. Originating case number: 8:09-cv-02367-AW. Annotation added 1 to opinion reflecting Supreme Court history. – [Edited 01/05/2016 by SJC] (DL)
5/21/2015	50	JUDGMENT ORDER filed. Disposition method: 13-7279 opn.p.arg. Decision: Reversed and remanded. Originating case number: 8:09-cv-02367-AW. Entered on Docket Date: 05/21/2015. [999587652] Copies to all parties and the district court/agency.. [13-7279] (DL)

6/04/2015	54	Corrected PETITION for rehearing en banc (FRAP 35) by Appellee Micheal Ross. [13-7279] – [Edited 06/04/2015 by CH] Stephanie Lane-Weber
6/16/2015	55	COURT ORDER filed [999602849] denying Motion for rehearing en banc [54]; terminating Motion for rehearing en banc *[52]* Copies to all parties.. [13-7279] (CH)

FORM TO BE USED BY A PRISONER FILING A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Shaidon Blake AKA Shamvoy Smith
343938 – 1A31 NBCI
14100 McMullen Hwy. SW
Cumberland, MD. 21502
(Full name, prison identification number and address of the plaintiff)

v.

Civil Action No. AW-09-2367
(Leave blank. To be filled in by Court.)

(See Attached)
(Full name and address of the defendant(s))

COMPLAINT

(Filed Sep. 8, 2009)

I. Previous lawsuits

A. Have you filed other cases in state or federal court dealing with the same facts as in this case or against the same defendants?

YES [ ] NO [✓]

B. If you answered YES, describe that case(s) in the spaces below.

1. Parties to the other case(s):

   Plaintiff: NA

   Defendant(s): NA

Complaint Under The Civil Rights Act,
42 U.S.C. § 1983
In The United States District Court
For The District of Maryland

Shaidon Blake
343938 – 1A31/NBCI
14100 McMullen Hwy SW
Cumberland, MD. 21502
(Plaintiff)

v. Civil Action No. _____

Sec. Gary Maynard 300 E. Joppa Rd #1000 Towson MD.
Comm. Michael Stouffer 6776 Reisterstown Rd #310
Balt. MD
Sgt. Michael Ross 550 E. Madison St. Balt. MD.
James Madigan 550 E. Madison St. Balt. MD.
The Dept. of Corrections 6776 Reisterstown Rd #317
Balt. MD.
State of Maryland Capital Building, Annapolis, MD
M.R.D.CC 550 E. Madison St. Balt. MD.

2. Court (if a federal court name the district; if a state court name the city or county): NA

3. Case No.: NA

4. Date filed: NA

5. Name of judge that handled the case: NA

6. Disposition (won, dismissed, still pending, on appeal): NA

7. Date of disposition: NA

II. Administrative proceedings

A. If you are in a Division of Correction facility, did you file an administrative remedy procedure request under DCD 185-001, *et seq.*?

YES [✓] NO [ ]

1. If you answered YES:

   a. What was the result? After an investigation the defendant James Madigan was fired from M.R.D.C.C.

   b. Did you appeal to the Commissioner?

   YES [ ] NO [✓]

2. If you answered NO to either of the questions above, explain why you did not file an administrative remedy procedure request or an appeal to the Commissioner. The warden appropriately dismissed the defendant from his job as a lieutenant at M.R.D.C.C.

3. Did you file any other type of administrative complaint such as an appeal to the warden of an adjustment decision or a decision to withhold mail, a complaint to the Sundry Claims Board, etc.?

YES [ ] NO [✓] NA

4. If you answered YES, explain what you filed and what was the result. NA

B. If you are *not* in a Division of Correction facility, is there a grievance procedure at your institution?

YES [ ] NO [ ] NA

If your answer is YES:

1. Did you file a grievance?

   YES [ ] NO [ ] NA

2. If you filed a grievance what was the result? NA

3. If you did not file a grievance explain why not? NA

III. Statement of claim

(Briefly state the facts of your case. Include dates, times, and places. Describe what each defendant did or how he/she is involved. If you are making a number of related claims, number and explain each claim in a separate paragraph.) (See attached) pg. 6

IV. Relief

(State briefly what you want the Court to do for you) (See attached) pg. 8

SIGNED THIS 7 day of September, 2009.

Shaidon Blake
(original signature of plaintiff)
343 938 – 1A 31 NBCI
14100 McMullen Hwy SW
Cumberland, MD. 21502
(address of Plaintiff)

III. Statement of Case

On 6-21-07 at 6:50 pm while I was being escorted from unit 7e at the MRDCC (Diagnostic & Classification Center) by Sgt. Michael Ross I was approached by Lt. James Madigan who once I was handcuffed behind my back proceeded to push me. I was headed down on flight of stairs at the time. His actions were unprovoked so I stated he didn't have to push me. Once outside of the unit Lt. Madigan returned inside to speak with Teir Officer Cpl. Candice Fields and I was ordered to stand with my right shoulder against the wall until Lt. Madigan returned. I was being watched by Sgt. Ross and I complied with the order. After Lt. Madigan exited the unit he approached me and without warning or being provoked in any way by me started to punch me in the face. Lt. Madigan had a circle key ring gripped in his hands as he pounded me in the left side of my face from over head approximately 7 times. His force drove my head into the wall several times. After his unprovoked attack he then proceeded to try and throw me to the ground yelling for me to take a knee. St. Ross made no attempts to stop the attack but the office assigned to

the hall called for officers assistance. Capt. Vincent was one of the first to respond and separated Lt. Madigan and Sgt. Ross from me then I was escorted to medical by Captain Vincent.

I am in state custody and it was a unprovoked attack in which I now live with the result. Therefore I am now seeking to hold the Department of Corrections, the State of Maryland, Secretary Gary D. Maynard, Commissioner Michael Stouffer, M.R.D.C.C., Sgt. Michael Ross and James Madigan responsible for my injuries.

The State of Maryland, Sec. Maynard, Comm. Stouffer and M.R.D.C.C. had a volitile and unstable employee working and my injuries and assault are the results of improper job screening and oversight which is neglegence.

Sgt. M. Ross was responsible to protect me from attack and injury because he was my escort and because I was handcuffed behind my back I was rendered defenseless. I am psycologically damaged and physically and therefore I am under permanent doctors care taking medication.

IV. Relief

I Sheldon Blake am seeking compensation for pain & suffering along with extensive medical treatment in the amount of 1 million dollars ($1,000,000.00) and any other relief this court deems proper.

I now suffer from P.T.S.D. and constantly relive my attack which interferes with my ability to interact with officers. I find it hard to trust any officers and do not like being handcuffed for fear of attack. I am on administrative segregation because my anxiety attacks won't allow me to function properly in general population. I am under the psychiatrist's care and have to take medication twice daily for my condition.

This attack has worsened a injury I had in my head and face. I suffer from permanate nerve damage on my left side of my face and severe migranes which I take 600 miligrams of Neurontin for the pain.

Psychiatrist has prescribed 50mg Diphenhydramine Hcl twice a day. 5mg Perphenazine twice a day and 60mg of Prozac once a day. These medications are to treat anxiety attacks, depression, and P.T.S.D.

[Certificate Of Service Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAIDON BLAKE aka SHAMVOY SMITH, #343938	*	
Plaintiff,	*	Civil No. AW-09-2367
v.	*	
GARY MAYNARD, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * * * * * * * * *

ANSWER

(Filed Nov. 19, 2009)

Defendants, Gary Maynard, J. Michael Stouffer, Department Of Corrections, State Of Maryland, MRDCC and Michael Ross, by their attorneys, Douglas F. Gansler, Attorney General of Maryland, and Glenn W. Bell, Assistant Attorney General, in answer to the complaint state:

1. Defendants deny each and every allegation set forth in the complaint. And in further answer to the complaint, Defendants state:

2. Defendants' actions were performed in a reasonable good faith belief that their actions were proper.

3. Defendants' actions were performed in good faith reliance on standard operating procedures.

4. The complaint does not state a claim upon which the relief prayed can be granted.

5. Each and every act and action of the Defendants taken with respect to the Plaintiff was done and performed in good faith, in the official discharge of their duties as employees of the Division of Correction, and with a reasonable belief as to the constitutionality of their actions for which they enjoy a qualified immunity from liability.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAIDON BLAKE aka SHAMVOY SMITH	*	
	*	
Plaintiff	*	Civil Action No.
v	*	AW-09-2367
GARY MAYNARD, *et al.*	*	
	*	
Defendants	*	
	***	

MEMORANDUM

(Filed Sep. 9, 2010)

Pending is Plaintiff's Motion for Summary Judgment and Defendants' Motion to Dismiss or for Summary Judgment. Paper No. 17 and 18. Also pending is Plaintiff's Motion to Compel Discovery and Defendant Consolidation.[1] Paper No. 16. Plaintiff has opposed Defendants' Motion to Dismiss or for Summary Judgment. Paper No. 26. Upon review of the papers filed, the Court finds a hearing in this

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[1] Plaintiff states in his Motion to Compel that counsel has not complied with his requests for production of documents. Paper No. 16. It appears that in the interim counsel did provide the documents Plaintiff requested, as stated in Defendants' opposition to the motion to compel. Paper No. 19. Plaintiff has filed the requested documents as exhibits to his Response in Opposition. Paper No. 26. Thus, his Motion to Compel shall be denied.

matter unnecessary. *See* Local Rule 105.6 (D. Md. 2010).

Background

On June 21, 2007, Plaintiff was incarcerated at the Maryland Reception Diagnostic and Classification Center (MRDCC) and was being escorted while handcuffed from Unit 7C by Sergeant Michael Ross when he was approached by Lieutenant James Madigan. Paper No. 1 at p. 6. Plaintiff claims Madigan pushed him while he was walking down a flight of stairs. *Id.* Plaintiff states he told Madigan he did not have to push him since his actions were unprovoked. *Id.*

Madigan left Plaintiff in the hallway, instructing him to stand with his right shoulder against the wall, while Madigan went into another room to speak to Corporal Candice Fields, the tier officer. Plaintiff explains that he was being watched by Ross and that he complied with the order given by Madigan. He claims Madigan left the office, walked over to Plaintiff, and began punching him in the face without warning or provocation. Plaintiff states Madigan had a circular key ring gripped in his hands while he "pounded me in the left side of my face from over head approximately 7 times." *Id.* at p. 6. Plaintiff states the force of the blows drove his head into the wall several times and Ross never made any attempt to intervene on Plaintiff's behalf. After Madigan stopped punching Plaintiff he began yelling at him to

"take a knee" while attempting to throw Plaintiff to the ground. Plaintiff claims that a correctional officer assigned to a post in the hallway called for assistance during the assault and Captain Vincent responded to the call. Vincent separated Madigan and Ross from Plaintiff and escorted Plaintiff to the medical unit. *Id.* As a result of the assault Plaintiff states he suffers from psychological damage as well as permanent physical injuries for which he receives medical care. *Id.* at p. 7.

Defendants do not deny Madigan struck Plaintiff. Paper No. 18. The tier officer, Candis Fields, prepared an incident report describing the events, stating in relevant part:

> Upon beginning top tier evening recreation and phone list, inmate Blake, Shidon turned off the pod's television and stated, "which one of you told her to run a phone list? We run our own phone list up here. We men." Inmate Blake then stated to me 'you need to fall back and let us run this. We can run our own phone list.' I then stated to inmate Blake 'as the pod officer I will run a phone list to ensure that everyone gets a fair turn on the phone.' Inmate Blake then stated to another inmate 'she goin cause somebody to get hurt.' I then informed Sgt. Michael Ross and Lt. James Madigan of my observations and inmate's statements. At 7:15 p (sic) Sgt. Michael Ross and Sgt. lawn Davis entered 7 Charlie and secured inmate Blake into his cell without force

or incident. At 8:10 p Lt. James Madigan called 7 Charlie and I requested that inmate Blake be moved off of unit 7 Charlie due to several inmates stating that inmate does not allow others to use the telephone unless he approves. Inmates also stated that Blake intimidates other inmates by stating that he's head of the Bloods. Lt. Madigan then stated to me 'well the only way he'll be moved is if you write a ticket on him with charges 100, 104, 312, [and] 405: I then proceeded to write a notice of infraction with these listed charges to ensure that inmate Blake was no longer a threat or concern to other housed inmates. At 9:40 p, Lt. Madigan came onto 7 Charlie along with Sgt. Michael Ross and requested my handcuffs. I then handed him the handcuffs and we all proceeded to cell 7122. Lt. Madigan then ordered Blake to 'pack up.' Inmate then inquired 'why?' Lt. Madigan stated 'you're Mr. Tough Guy trying to take over a unit. Let's go.' Inmate then packed up his things and I handed Lt. Madigan my podset keys #241 and proceeded to the officer's level of the unit. Lt. Madigan and Sgt. Ross then secured inmate by means of handcuffs and proceeded down the steps. Inmate Blake began to be slowful (sic) coming down the steps being escorted by Sgt. Ross when Lt. **Madigan began to shove inmate in a forceful way down the steps**. Inmate Blake began to shout obsene (sic) remarks to Lt. Madigan. Inmate continued these remarks until reaching the threshold of 7 Charlie where Lt.

> **Madigan with keyset #241 in a closed fist struck inmate Blake . repeatedly on the right side of his jaw with his right hand**. Inmate Blake then became very agitated stating 'let me go, you hit me in my fucking mouth. Take these cuffs off.' Inmated stated this statement repeatedly with Sgt. Ross trying to remain in control of inmate. At 9:55 p, Cpl Latia Woodard assigned to 7 Corridor made a radio transmission 'signal 13, 7 corridor' due to Sgt. Ross and Lt. Madigan unable to gain control of inmate Blake.

Paper No. 18 at Ex. 1, pp. 18-21 (emphasis supplied). Other reports written by Latia Woodard and Sgt. Ross verify that Madigan struck Plaintiff, but do not confirm Madigan did so with the keyset clenched in his fist. *Id.* at pp. 17, 22-27 Woodard's report adds that she attempted to intervene by telling Madigan to let Plaintiff go, to no avail. *Id.* at p. 17 In addition she states Madigan told her to mace Plaintiff after he had punched Plaintiff in the jaw several times and they were walking toward the elevator. *Id.* Woodard states that she did not comply with the request to mace Plaintiff and instead called a signal 13 as requested by Sgt. Ross. *Id.*

Ross's report verifies that Plaintiff was not resistant to being escorted from his cell, but he did not want Madigan to touch him and repeatedly made moves in an attempt to get Madigan to let go of him. *Id.* at pp. 23-26. Additionally, it is clear from Ross's report that at no time was Madigan's intervention

necessary as Plaintiff was not resistant to being escorted by Ross. Ross verifies that Madigan pushed Plaintiff while he was on the stairs and that he hit Plaintiff repeatedly in the face. *Id.* Ross states under oath that when Madigan asked Woodard to mace Plaintiff, he told Woodard to call for assistance and told Plaintiff he was taking him to the floor. *Id.* at Ex. 2. Ross explains that Plaintiff agreed to go down to the floor but when he tried to pull Plaintiff to the floor their feet became entangled and Ross, Madigan and Plaintiff fell to the floor. *Id.* It was during this fall that Ross sustained contusions to his knees. *Id.*

Madigan claims he grabbed Plaintiff's right arm because he was trying to break free from Ross's grasp. Paper No. 18 at Ex. 1, p. 5. He further claims that Plaintiff "increased his resistance, shaking his body fiercely, causing us to lose our grasp" and that Plaintiff "lunged forward at me with his upper body." *Id.* Madigan then admits striking Plaintiff's face four times for purposes of gaining control over him and because he felt his safety was in jeopardy. The report from Madigan neglects to mention the request for mace[2] and simply recalls that Woodard called a signal 13. *Id.* Defendants uniformly claim that Plaintiff was taken to the medical unit where he declined treatment.

---

[2] Madigan admitted to requesting Woodard to mace Plaintiff when he was interviewed for an internal investigation report after he had resigned his position. Paper No. 26 at Ex. E, p. 3.

An investigation into the use of force was conducted and Captain Vincent found that:

> Though Lt. James Madigan wrote in his report that he feared for his safety, I conclude that the risk to his safety was negligible at best. I further conclude that the situation was escalated by Lt. Madigan's rigidness not to heed the request, then demand, of the inmate as well as Sergeant Michael Ross's comment that he, Sgt. Ross, had the inmate under control. In short, the event could have been avoided. Therefore, I recommend that Lt. James Madigan receive fifteen days suspension or forfeiture of the 120 hours of annual leave and/or mandatory use of force training.

Paper No. 18 at Ex. 1, p. 4. Vincent's findings were confirmed by both the Security Chief and the Warden who found the use of force was unnecessary and therefore excessive. *Id.* at p. 30. Madigan later signed a Disciplinary Action Settlement Agreement which required his resignation effective July 13, 2007 Paper No. 26 at Ex. A.

Standard of Review

Summary Judgment is governed by Fed. R. Civ. P. 56(c) which provides that:

> [Summary judgment] should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits, show that there is no genuine issue as to any

> material fact and that the moving party is entitled to a judgment as a matter of law.

The Supreme Court has clarified that this does not mean that any factual dispute will defeat the motion:

> By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.

Anderson v. Liberty Lobby, Inc., 477 U. S. 242, 247-48 (1986) (emphasis in original).

The party opposing a properly supported motion for summary judgment may not rest upon the mere allegations or denials of [his] pleadings but rather must set forth specific facts showing that there is a genuine issue for trial. *Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 525 (4th Cir. 2003) (alteration in original) (quoting Fed. R. Civ. P. 56(e)). The court should view the evidence in the light most favorable to the nonmovant, and draw all inferences in her favor without weighing the evidence or assessing the witness's credibility. *Dennis v. Columbia Colleton Med. Ctr., Inc.*, 290 F.3d 639, 644-45 (4th Cir. 2002). The court must, however, also abide by the affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial. *Bouchat*, 346 F.3d at 526 (internal

quotation marks omitted) (quoting *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir. 1993), and citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986)). The party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials of [its] pleading, but must set forth specific facts showing that there is a genuine issue for trial." *Rivanna Trawlers Unlimited v. Thompson Trawlers, Inc.*, 840 F.2d 236, 240 (4th Cir. 1988).

Analysis

Whether force used by prison officials was excessive is determined by inquiring if force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. *Hudson v. McMillian*, 503 U. S. 1, 6-7 (1992). This court must look at the need for application of force; the relationship between that need and the amount of force applied; the extent of the injury inflicted; the extent of the threat to the safety of staff and inmates as reasonably perceived by prison officials; and any efforts made to temper the severity of the response. *See Whitley v. Albers*, 475 U. S. 312, 321 (1986). The absence of significant injury alone is not dispositive of a claim of excessive force. *Wilkens v. Gaddy*, ___ U.S. ___, 130 S. Ct. 1175 (2010). The extent of injury incurred is one factor indicative of whether or not the force used was necessary in a particular situation, but if force is applied maliciously and sadistically liability is not avoided simply because the prisoner had the good fortune to escape serious harm. *Id.*

The undisputed evidence establishes that the force used against Plaintiff by Madigan was excessive and unnecessary. Disciplinary action was taken against Madigan resulting in his removal from employment with the Department of Public Safety and Correctional Services. In addition, Plaintiff submits medical records from July 2007 to January 2010 which indicate he suffered nerve damage to his face, causing headaches for which he is prescribed neurontin. Paper No. 26 at Ex. S-KK. Defendants have not presented evidence to refute the medical records submitted by Plaintiff; thus, it is undisputed that he suffered serious harm as a result of the force used.

The question remains, who is responsible for Plaintiff's injuries? Defendants suggest they are entitled to avail themselves of a qualified immunity defense because they did not violate any clearly established legal rule. Paper No. 18. When considering whether a defendant is entitled to avail himself of a qualified immunity defense, this Court must consider whether, at the time of the claimed violation, this right was clearly established and "whether a reasonable person in the official's position would have known that his conduct would violate that right." *Rish v. Johnson*, 131 F. 3d 1092, 1095 (4th Cir. 1997) *citation omitted.* In this case Plaintiff was restrained, at least partially cooperative, and he was punched in the face at least four times. A reasonable person would have known that the conduct in question was unlawful. Indeed, other officers who witnessed the events did not view Madigan's conduct as reasonable

under the circumstances. A qualified immunity defense is unavailable in this case.

It is easily concluded that Madigan was responsible for the excessive force used against Plaintiff, however, Madigan has never been served with the Complaint. Recent attempts to serve Madigan at his last known home address failed; the summons was returned unexecuted, marked "return to sender unable to forward." Paper No. 29. Thus, Madigan has not had the opportunity to defend against the Complaint and judgment may not be entered against him in the procedural posture of this case.[3]

Plaintiff assigns blame to Ross for failing to intervene on his behalf when Madigan was assaulting him. Paper No. 1 and 26. Defendants allege that to the extent Ross failed to intervene on Plaintiff's behalf, such failure is simply negligence and does not state a constitutional claim. It is clear from the evidence submitted by both parties that Ross was in the best position of any other officers on the scene to determine whether Plaintiff's conduct required a use of force against him. According to his statement, Ross told Madigan that he had control of Plaintiff, seemingly to discourage Madigan from his continued efforts to grab Plaintiff. In addition, Ross told Woodard to radio for help and attempted to get Plaintiff to the floor. Whether Ross's actions were sufficient

---

[3] Plaintiff's Motion for Default Judgment (Paper No. 27) must, therefore, be denied.

in light of the circumstances is a genuine dispute of material fact precluding summary judgment as to the claims against Ross.

Defendants Maynard and Stouffer are supervisory officials against whom no allegations of direct involvement or wrongdoing has been claimed. Liability of supervisory officials "is not based on ordinary principles of respondeat superior, but is instead premised on 'a recognition that supervisory indifference or tacit authorization of subordinates' misconduct may be a causative factor in the constitutional injuries they inflict on those committed to their care.'" *Baynard v. Malone*, 268 F.3d 228, 235 (4th Cir. 2001) *citing Slakan v. Porter*, 737 F.2d 368, 372 (4th Cir. 1984). Supervisory liability under § 1983 must be supported with evidence that: (1) the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens like the plaintiff; (2) the supervisor's response to the knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive practices; and (3) there was an affirmative causal link between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff. *See Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994). Plaintiff has pointed to no action or inaction on the part of Stouffer and Maynard that resulted in the constitutional injury suffered. Although he suggests that Madigan was imbalanced and should not have been hired, there is no evidence to support that

theory. Moreover, once Madigan's conduct was made known to supervisory officials he was placed on administrative leave and ultimately removed from the job. Thus, this is not a case where gross misconduct was overlooked and thereby tacitly authorized. Stouffer and Maynard are entitled to summary judgment in their favor.

Conclusion

Summary judgment will be granted in favor of Stouffer and Maynard, but denied as to Ross. Plaintiff's Motion for Summary Judgment shall be denied without prejudice. In light of Plaintiff's incarceration in another state, counsel shall be appointed to represent Plaintiff for all purposes, including obtaining service on Madigan, conducting discovery, filing motions, and proceeding to trial. A separate Order follows.

September 9, 2010
Date

//s//
Alexander Williams, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAIDON BLAKE aka SHAMVOY SMITH, #343938	*	
Plaintiff,	*	Civil No. AW-09-2367
v.	*	
GARY MAYNARD, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * * * * * * * * *

CONSENT MOTION FOR LEAVE TO AMEND DEFENDANT MICHAEL ROSS'S ANSWER

(Filed Aug. 2, 2011)

Defendant Michael Ross, through counsel, moves, under Fed. R. Civ. Pro. 15(a)(2), for leave to amend his answer to the complaint (Doc. 1) and in support of his motion states:

1. Defendant Michael Ross filed an answer to the complaint in this action on November 19, 2009. (Doc. 6.) On February 4, 2010, defendant Michael Ross filed a motion to dismiss, or, in the alternative for summary judgment (Doc. 18), which was denied without prejudice on September 9, 2010. (Doc. 33.) The parties are now engaged in discovery. (Doc. 62.)

2. Leave to amend a pleading before trial should be freely granted. Fed. R. Civ. Pro. 15(a)(2). Defendant Ross's original answer was made at the

commencement of the case and was made without the benefit of discovery. The proposed amended answer, attached here, clarifies defendant Ross's position and updates the affirmative defenses defendant Ross intends to assert in response to this action. In accordance with Local Rule 103(6)(d), undersigned counsel has obtained consent from the other parties to this litigation to seek leave to amend.

3. No depositions have been taken in this action and approximately two months remain in the discovery period agreed to by the parties to pursue any additional discovery desired by the parties as a result of this amendment. *See*, Third Amended Joint 26(f) Report (Doc. 62) (setting deadline for all discovery as September 30, 2011). Moreover, no trial dates have been scheduled. Therefore, the other parties and the Court will not be prejudiced by the granting of this motion.

WHEREFORE, defendant Michael Ross requests that he be granted leave to file an amended answer to the complaint. The proposed pleading, a comparison copy of the amended pleading, and a proposed order are attached.

Respectfully submitted,

DOUGLAS F. GANSLER
Attorney General of Maryland

/s/

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August 2, 2011

Attorneys for Defendant
Michael Ross

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAIDON BLAKE aka SHAMVOY SMITH, #343938	*	
Plaintiff,	*	Civil No. AW-09-2367
v.	*	
GARY MAYNARD, *et al.*,	*	
Defendants.	*	

* *

AMENDED ANSWER

Defendant Michael Ross, through counsel, answers the plaintiff's complaint as follows:

1. Defendant admits that on June 21, 2007, at the Maryland Reception, Diagnostic and Classification Center, he was involved in escorting inmate Shaidon Blake, #343-938, along with Lieutenant Madigan. Defendant denies the remainder of the plaintiff's allegations as to him and his actions.

2. Defendant admits that he witnessed Lieutenant Madigan strike the plaintiff more than one time. Defendant has insufficient information to admit or deny the remaining allegations as to Lieutenant Madigan, and therefore denies them.

3. Defendant admits that additional correctional officers were called to the scene and that inmate Blake was escorted to medical. Defendant has insufficient information to admit or deny the remaining allegations related to the events of June 21, 2007.

4. Defendant states that the legal conclusions contained in the complaint do not require response. To the extent a response is required, all such conclusions are denied.

5. Defendant has insufficient information to admit or deny plaintiff's claim that his pre-existing mental and physical conditions were worsened by the incident, and therefore denies all such allegations.

6. Plaintiff's request for relief is not an allegation for which answer is required. To the extent an answer is required, defendants denies that plaintiff is entitled to the requested relief or to any relief whatsoever.

DEFENSES

1. Defendant denies every allegation in plaintiff's amended complaint not expressly admitted.

2. The plaintiff's amended complaint fails to state a claim for which relief may be granted as to defendant Ross.

3. Each and every act and action of the Defendant taken with respect to the Plaintiff was done and performed in good faith, in the official discharge of his duties as an employee of the State of Maryland, and with a reasonable belief as to the constitutionality of his actions for which he enjoys a qualified immunity. from liability.

4. Plaintiff's claims are barred because defendant enjoys state personnel immunity, immunity under the Maryland Tort Claims Act, and qualified immunity.

5. Plaintiff's claims are barred by failure to properly exhaust all administrative remedies available to him as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e *et seq.*

Respectfully submitted,

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/s/

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAIDON BLAKE aka SHAMVOY SMITH, #343938, Plaintiff, vs. GARY MAYNARD, et al., Defendants.	:	Civil Number AW-09-367

DEPOSITION OF LATIA WOODARD

Washington, D.C.

Wednesday, August 10, 2011

* * *

[41] Q And at this point, Mr. Blake was continuing to tell Mr. Madigan not to touch him?

A Yes.

Q And was Mr. Ross saying anything at this point?

A No.

Q And was Mr. Madigan saying anything at this point?

A No.

Q And was Mr. Madigan still holding on to –

A Yes.

Q – Mr. Blake?

How far along were they walking when Mr. Madigan hit Mr. Blake?

A Maybe five steps.

Q And were they walking while the hit occurred?

A No, they were standing still.

Q Why were they standing still?

A I have no idea.

Q They just stopped?

[42] A Yes.

Q And where was Mr. Ross at this point?

A Ross was on Blake's right side holding him.

Q Can you mark – please mark an H on the map where the first hit occurred?

Could you hear everything the whole time?

A Yes.

Q Was there any radios on – radio communication going on during that time?

A I'm not sure.

Q Was there any possibility that Mr. Ross and Mr. Madigan said something that you didn't hear?

A I'm not sure.

Q How loud was Mr. Blake when he was saying "don't touch me"?

A He was pretty loud.

Q And typically, are there correctional officers as loud?

A No.

Q So it's a possibility that you heard him because he was so loud and the correctional officers [43] were quieter?

A Right.

Q So tell me about that first hit. Where were you standing?

A I was standing in front of the three of them.

Q They were facing you?

A Actually, they were up on the wall, and I was directly right there.

Q Okay. Approximately how close would you say you were?

A Maybe 2 feet.

Q Were you looking directly at them?

A Yes.

Q And did Mr. Madigan let go of Mr. Blake before he hit him?

A No.

Q So he was holding on to his left arm?

A Right.

Q That's correct?

A Yes.

Q He was holding on to his left arm. And do [44] you remember if he was holding on to his left arm with his right hand or his left hand?

A At the time of the punch, I'm not sure.

Q And it was a punch?

A Yes.

Q Was it closed or open fist?

A Closed.

Q Closed. Did you see him have anything in his hand?

A No.

Q No, he didn't have anything in his hand or no, you didn't see anything?

A No, he didn't have anything in his hand.

Q How hard would you say that punch was?

A I don't think – I don't think it was that hard.

Q Would you say that it was a, like, "hey you" punch or an actual, like, full-swing punch?

A I want to say maybe a "hey you" punch. I don't think it was hard at all.

Q And was Mr. Blake standing up against a wall?

[45] A Yes.

Q And did Mr. Blake's head hit the wall at any point?

A I'm not sure.

Q You didn't see?

A I can't remember.

Q Can't remember. And what happened after the first punch?

A I believe Blake said, "Hit me," and Lieutenant Madigan hit him again.

Q Was – did Lieutenant Ross say anything at this point?

A I'm not sure.

Q Was Lieutenant Ross looking at Mr. Blake and Mr. Madigan at this point?

A I'm not sure.

Q How was he still holding on to Mr. Blake at this point?

A He was still holding on to his right arm.

Q Up against the wall?

A Yes.

Q So there was at least a second hit?

[46] A Yes.

Q And was there – did you see a third hit?

A I want to say it was, because there was several.

Q There were several?

A Yes.

Q And approximately how long in between each of these hits?

A Maybe five seconds.

Q And were they standing still during – when this occurred?

A Yes, but I want to say Lieutenant Ross was moving towards – still moving towards 7B at the time. So the whole time they wasn't just standing there.

Q So he was still moving towards 7B while holding on to Blake?

A Right.

Q But Blake and Madigan were still standing still?

A No, they were – I want to say they were moving too, but the first hit they was standing [47] still.

Q Okay. And then they started moving?

A Right.

Q And where – can you mark a 2 by where the second hit occurred?

A I want to say it's the same – basically, the same area. Still want me to mark it?

Q No, that's fine, if it's the same area.

Did you say anything at this point to anyone?

A I told Lieutenant Madigan to let Blake go because Sergeant Ross had him under control.

Q And did – Mr. Ross didn't say anything?

A I can't recall.

Q Why did you tell Madigan to stop hitting Ross – or to stop hitting Blake?

A I really felt there was no need. He had no reason to hit him.

Q Why would he have had no reason?

A Blake wasn't a threat to any of us.

Q Do you receive any training for what to do when another officer is using force, unnecessary [48] force?

A No, not really.

Q So there's no procedures or anything?

A I'm sure it is, but I've never been in that situation, so I really can't say.

Q What – in your opinion, what should a guard do in a situation like that?

A Call for assistance.

Q Did you say anything else during the assault?

A No, I just kept telling Lieutenant Madigan to let him go.

Q And after you said that, did any other hits occur, anymore punches?

A I'm not sure.

Q Was there any way – Mr. Blake was handcuffed; correct?

A Yes.

Q So did he have the ability to put his hands up to shield his head at all?

A I'm not sure, because I'm not sure if he was handcuffed from the front or the back.

[49] Q Did you see him move to put his hands up, to cover his face?

A I'm not sure because I don't know if he was cuffed in the front or the back.

Q Did you see him make any physical movements during this?

A No.

Q No? After you said to Mr. Madigan to stop, did Mr. Madigan say anything to you?

A I'm not sure right after, but a while after, he asked me to mace Blake.

Q How long after?

A Maybe a minute or two into the confrontation.

Q So how long – how long would you say between the first punch and when you were asked to mace Mr. Blake?

A Maybe a minute.

Q At any point, did Mr. Ross call for assistance?

A No.

Q But you said a guard should have called [50] for assistance?

A If they need it.

Q And in your opinion, you thought assistance was needed?

A At the time no, because Lieutenant Ross had Blake under control.

Q But Mr. Madigan was still hitting Mr. Blake?

A Yes.

Q So how would you stop Mr. Madigan from hitting Mr. Blake?

A I guess to call for assistance.

Q You said Mr. Madigan asked – asked you to mace Mr. Blake?

A Yes.

Q And did you orally refuse? Did you tell him no?

A Yes.

Q Did you give him a reason?

A No.

Q But why did you refuse?

A Because Blake wasn't a threat to any of [51] us.

Q Is there anything in the procedures about macing inmates?

A Yes.

Q Do you know what particular procedure that would be, what it says?

A When you feel threatened.

Q When you feel threatened. Do all officers carry mace?

A Yes.

Q So do you know why Mr. Madigan asked you to mace Blake rather than macing him himself?

A No.

Q Or rather than having Mr. Ross mace Mr. Blake?

A No.

Q Was assistance ever called?

A Yes.

Q Who called for assistance?

A I did.

Q And what happened? How did you call for assistance?

[52] A I radioed over – I sent a radio signal 13. That was told to me by Sergeant Ross.

Q Sergeant Ross told you to signal – when did he tell you that?

A As we were moving towards the elevator.

Q And this was while the punches were occurring?

A After.

Q After. What is a signal 13?

A An inmate on an officer.

Q An inmate on an officer?

A Right.

Q Is there any signal for officer on an inmate?

A No. It would be basically the same thing.

Q Did you step away to make the call?

A I wasn't directly in front of them, but –

Q How close were you to them at this point?

A Maybe 3 feet away.

Q And did you have to go anywhere to make the call?

A No.

[53] Q Did you have to look away to make the call?

A No.

Q Was telling you to call the signal 13 after the punches had stopped the only thing that Mr. Ross said during the assault?

A Yes, that I can recall.

Q What happened after you called the signal 13?

A Officers started responding.

Q What does that mean?

A They came to where the incident occurred.

Q They came to – I'm sorry?

A Where the incident had occurred.

Q Did they come from 7 Charlie? 7 Bravo?

A They came from off the elevator.

Q And how many officers responded?

A I'm not sure. There was a few.

Q And do you know the procedures for responding to a signal 13?

A Yes.

Q What are those procedures?

[54] A We go to where the code is called and basically grab the inmate.

Q Have you ever participated in a signal 13 before?

A No.

Q That was your only signal 13?

A Yes.

Q And what – where was Mr. Ross, Mr. Blake and Mr. Madigan at this point?

A On the floor.

Q Did you see them get to the floor?

A Once I seen them getting – the response team getting off the elevator, I looked over and I seen that they had went to the floor.

Q So you had turned away between calling the signal 13 and the response team?

A Well, I was still looking at them when I called the signal 13. Then I must have looked away, because I didn't see them until I looked back, I seen them on the floor.

* * *

BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAIDON BLAKE, a/k/a SHAMVOY SMITH,	:	
Plaintiff,	:	Civil Action Number
vs.	:	AW-09-367
GARY MAYNARD, et al.,	:	
Defendants.	:	

DEPOSITION OF CANDIS FIELDS

Washington, D.C.

Wednesday, August 17, 2011

* * *

[34] Q Was the inmate disrespectful to you?

A No.

Q Had you seen him be disrespectful to any of the other guards?

A I hadn't seen him interact with anybody else.

Q So would you have written the ticket if Madigan hadn't told you to?

A Probably not.

Q Now, when Lieutenant Madigan and Mr. Ross were going to take the inmate from his cell, you said that Madigan asked for your handcuffs?

A Yes.

Q And why did he ask for your handcuffs?

A Probably because he didn't have any.

Q Do lieutenants not have handcuffs?

A I've never seen it like as a common practice for them to wear handcuffs.

Q They don't typically have handcuffs?

A Not that I know of.

[35] Q And did he also ask for your keys?

A Yes.

Q And do they typically not have the keys either?

A No. Each key set is only for that particular unit. It goes to only those doors.

Q And after you gave him your keys, what did you do right after that? Did you stand there? Did you go somewhere else?

A No, I sat there.

Q You sat there?

A Uh-huh.

Q You indicated that they had to go down a set of stairs.

A Up.

Q They went up a set of stairs?

A Yes.

Q Where were Mr. Madigan and Mr. Ross in relationship to the inmate at this point?

A They went up the stairs to get him from his cell. His cell was upstairs, was up the steps.

Q And after they got him out of his cell, [36] did they have to come back down the steps?

A Right.

Q Where were Mr. Madigan and Mr. Ross in comparison to the inmate at this point?

A Sergeant Ross was behind him, like on an angle. Like you're supposed to be on an angle when you're holding him. And he was just holding – just like holding their right arm.

Q And what about Mr. Madigan?

A He was like at his side behind him.

Q Was he also holding?

A No.

Q Is that what he was supposed to be doing?

A Yes.

Q Did you see Mr. Madigan touch the inmate at all on the stairs?

A No; not that I remember, no.

Q Then they went out through the door?

A Yes.

Q And you said that Mr. Madigan hit Mr. Blake. Is this before or after the door was closed?

[37] A While the door was closed – I mean, while the door was open. They were like going out the door.

Q Was there anything between you and Mr. Madigan while he hit Mr. Blake?

A You said was there anything –

Q Anything in between you. Is there any reason you would not have seen something?

A No.

Q How far away were you at this time from them?

A I was at the desk. So that's probably – I don't have a measurement, but not that far, probably like from where I'm sitting to where she is.

Q So approximately 5 feet?

A Probably a little less than that.

Q Probably a little less than 5 feet?

A Yeah.

Q And where was Mr. Ross at this point?

A Still holding him, still doing his escort like he was supposed to, holding his arm.

[38] Q Where was Mr. Madigan in relationship to Mr. Ross?

A By that time he was – he was still like where he was at before, coming down behind him.

Q So Mr. Madigan was behind the inmate, and Mr. Ross was holding on to the inmate?

A Right; yeah. He was doing a proper escort, like holding him.

Q And how did Mr. Madigan hit the inmate? What kind of a hit was it? Was it a closed fist? Open hand?

A Closed fist.

Q Was there anything in his fist?

A Now, that, I don't remember. I know he hit him, but I don't remember that or not.

Q What was Mr. Ross doing at this point? When the hit occurred, what was Mr. Ross doing?

A Still holding him. They was going out the door. It was like a quick thing. So he was like holding him. He hit him. That's when the guy like started jerking out, I guess.

Q Did you see any other hits after the first [39] one?

A No. I remember that one, but I don't remember any after that.

Q Did you see Mr. Ross do anything after the first hit?

A No. They were going out the door. So like – I'm not sure if you've seen Sergeant Ross, but he's a big dude, like tall. The doorways are kind of like narrow doorways. They were going out of the door like at the same time. But when he hit him, that's when the guy like started jerking out. So they were going out the door.

Q So they were in the doorway when this occurred?

A Yeah, like kind of sort of – you know, like generally walking.

Q And what's the procedure when a guard hits an inmate?

A I don't know.

Q What would you have done if you had the ability to do anything at that point?

A I don't know. I mean – I don't know.

[40] Q If you were holding on to an inmate and another guard hit an inmate, what would you have done?

A Honestly, I don't know.

Q You don't remember any procedures or anything? Nobody talked to you about what to do if a guard hit an inmate?

A No. I mean, because the guy started like jerking out, and Sergeant Ross is holding him. So I guess try to gain control. You would try to regain control.

Q Anything about any reaction to the guard that's actually doing hitting?

A What do you mean?

Q Are you supposed to stop the guard that's hitting the inmate?

A Are you supposed to stop – yeah, I believe you're supposed to stop them. The natural thing would be –

Q How would you stop the guard that was trying to hit the inmate?

A I don't know. I've never been in that [41] position. I don't know. I guess it would be an instinct thing. I don't know.

Q And you said the door closed between the – right after the first hit?

A Right. I only seen him hit him once.

Q And when did the door close?

A Like right after, like when they were – like they were going through the doorway. That's when I seen – I guess that's when I seen him hit him. I know he hit him. So when they went through the doorway, that's when the guy was like jerking out or whatever. It's like a big metal door. So as soon as you let it go, it closes.

Q And this is when all the inmates were –

A They were locked in.

Q And they were banging on the door?

A Right.

Q And you turned around to deal with the other inmates?

A Right.

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAIDON BLAKE aka SHAMVOY SMITH, #343938, Plaintiff, vs. GARY MAYNARD, et al., Defendants.	:	Civil Number AW-09-367

VIDEOTAPED DEPOSITION OF MICHAEL ROSS

Washington, DC

Wednesday, August 24, 2011

* * *

[42] Q Who did you ask why?

A I don't know. See, I can't really recall.

I'm – I want to say that it might have been – Lieutenant Madigan might have knew more information than I did. But I remember they – it might have been him that said that he was on the tier, like he was trying to run the tier, trying to start, I guess you can say, a little – a little gang, a group of guys up on the tier, by like controlling the television set on the tier. He controls when the TV comes on, when it goes off, who will see what channel, like that.

That's my recollection.

Q Who told you that?

A I don't remember.

Q So what did you do after you got that call?

A I proceeded to 7 Charlie.

Q And what happened –

A Along with Lieutenant Madigan.

Q And what happened when you got there?

[43] A So when I got to the tier, I asked the officer what cell was – the inmate was in, and she told me he was in cell 22.

So at that time, I decided, since I was the sergeant and Madigan was the lieutenant, to let him take lead and I would just play backup, the backup role.

That's when we went up to the inmate's cell door.

Q Who was the officer that told you which cell he was in?

A Ms. Fields, Candis Fields.

Q And what happened when you got to the cell door?

A Well, when we got – when we got to the cell door – we got to the cell door. He – Lieutenant Madigan asked the inmate, you know, that he – asked him,

do you want me to open up the door. He told me – he kept the door shut and told them that he was going to go on lockup, to start packing up his stuff.

And after that – you want me to just [44] continue?

Q Please.

A And after that, he – he told me to go ahead and open up the door. So I opened up the door, and now the door to the pod is open. And inmate Blake is standing, like, right at the door but still inside the cell.

And Lieutenant Madigan, he pulled out a set of his handcuffs, and he was actually holding the handcuffs like this (indicating) and telling him that he was about to place him on lockup because he was trying to excite a riot up on – on the tier.

So of course, the inmate didn't agree. He was saying that he wasn't trying to do anything.

And so he – so at that time, like maybe a minute or so, so I was just standing there.

And you see the inmate was just, you know, looking. So that's when I decided I would – I said, well, let me just put the handcuffs on the inmate, because I didn't want too much time to go past, because then he might become resistant.

So that's when I – that's when I stepped [45] inside the cell with Mr. Blake, and I told him that, you know, I was going to, you know, put – place the

handcuffs on him and put him on lockup. And he said okay. He said because I'm – like he said, like, "I'm cool with you, Ross."

Then he got to talking, he says – he must have had a complaint or something before and asked to see a lieutenant, and he said that the lieutenant didn't come up there on the tier.

And so now – so that's why he got mad. And he was like, "well, don't come up here now to lock me up. You didn't come up here earlier to see what I wanted."

And at this time, I put the handcuffs on. Then I – you know, hands behind his back,

Mr. Blake. And once I finished placing the handcuffs on him, we was ready – I was ready to escort him to 7 B, which is right down the hallway.

Q So whose handcuffs did you use?

A Mine.

Q Where – where did you get the keys to unlock the pod and Blake's cell?

[46] A I got that from Ms. – Ms. Candis, she was running the tier. She was – she was still down at the desk at the time. So I got her keys and came up to unlock the door to the cell.

Q You did?

A Uh-huh.

Q What did you do with the keys after you unlocked the door?

A I think when I entered the – when I entered the unit, I passed the keys to – when I entered the cell, I passed the keys to Lieutenant Madigan.

Q What did Mr. Madigan do with the keys?

A I don't recall.

Q Let me take a step back. The call you received to go 7 Charlie and remove Mr. Blake to take him to 7 Bravo, that was the first call you got that day involving Mr. Blake?

A Yes.

Q So once you put the handcuffs on Mr. Blake behind his back, what happened next?

A Once I placed the handcuffs on Mr. Blake, [47] I was about to escort him out the cell – Mr. Blake went out the cell first, and I was coming out right behind him.

And once – once we got into the – outside the cell, Lieutenant Madigan had – you know, had touched the other arm of Mr. Blake, and he, like, twisted like, you know, told the lieutenant to get off of him, that, you know, he couldn't come see what he want, he said, you know – well, I don't know if he called me Sergeant Ross, he said, "Ross going to escort me to lockup."

And so, all right, so now I'm outside the cell too. Then we was going down the steps, and me and Mr.

Blake was side by side coming down the steps, and I remember he, like, shrugged, like moved his shoulders another time.

And I looked at him, and he said that –he said for Madigan to get off him again, so I just assumed that Madigan had, you know, had touched him again.

Q So – I'm sorry, go ahead.

A At the time, that's when I told Lieutenant [48] Madigan, like, you know, I got him, I got him. I remember saying that to him, to the lieutenant.

Q So when you left the cell, were you holding onto Mr. Blake?

A Yes.

Q And how were you holding onto him?

A When we left the cell, I had his left arm as he was going outside the cell, like right behind him.

Q You had his left arm?

A Uh-huh.

Q Which hand were you holding him with?

A My right hand.

Q And then at some point after you left the cell, Mr. Madigan tried to put his hands on Mr. Blake?

A Yes.

Q And what part of Mr. Blake was Mr. Madigan trying to hold?

A His right arm.

Q And how was Mr. Madigan trying to hold Mr. Blake's right arm?

[49] A I mean, I believe with his – with his arm. I don't know which one he used or anything like that, because I was on the opposite side.

Q When escorting a prisoner, do more than one guard have to keep control of an inmate, or is one guard holding an inmate sufficient?

A It – it really depends on the inmate. He determines – I mean, you can escort an inmate with just one guard and one inmate.

Q With Mr. Blake, when you left the cell and you were holding his left arm with your right hand, did you think that was good enough?

A Yes, I did.

Q So once Mr. Madigan tried to grab hold of Mr. Blake's other arm, that's when Mr. Blake started twisting? Is that what you said?

A Yes, like –

Q Did you say anything to Mr. Madigan at that point, at the first time he tried to grab his arm?

A No.

Q So then you approached the steps?

[50] A Uh-huh.

Q And what happened on the steps?

A When we started down the steps, we got toward the end of the steps, I guess this might be about – about, I'm going to say, 12 steps.

When we got toward the end of the steps, Inmate Blake had – you know, like twisted his body again (indicating). And then that's when – and that's when I assumed that – that Madigan had tried to grab his arm again.

So that's when I informed Madigan that, you know, I got him, I got him.

Q Did you say anything else to Mr. Madigan?

A No, not at that time.

Q Did Mr. Madigan say anything to you?

A No, not that I can remember.

Q Did Mr. Madigan keep trying to grab hold of Mr. Blake?

A Well, once – once we reached the bottom of the steps, he never – he didn't try again until we was escorted outside of the unit, into the hallway.

[51] Q When you were the only one holding Mr. Blake's arm, was Mr. Blake twisting or doing anything –

A No.

Q – at that point?

Did anything else happen on the steps?

A Not that I can recall.

Q Was Mr. Madigan behind you and Mr. Blake on the steps?

A Yes.

Q So you couldn't see what Mr. Madigan was doing?

A No, I couldn't really see what he was doing.

Q After you reached the bottom of the steps, what happened next?

A Well, then we had to – you have to, like, walk approximately 20 feet to the door, the front door of the pod where you came in at.

And at the front door is an officer's desk there and where the officer sits at. And officer Candis Fields was sitting at the desk, and with me, [52] it's always – if we was called to a unit, then it would probably all start because that officer called us to the unit because he had a – had a complaint.

And if I have an inmate in handcuffs and have to walk out the door, I don't like taking the inmate past the officer who really – because the inmate might spit on the officer, because they're already going to be mad because they're going to lockup.

So I always tell the officer to move away from the door as I – as I'm exiting.

So that's what I did with Officer Fields. I told her to move away from the door. And the corridor officer opens up the door, so she don't have to open up the outer door to let us out.

Q So Ms. Fields, did she move away from the door?

A Yes.

Q And there was an officer on the other side of the door?

A Yes.

Q Who was that?

[53] A Officer Woodard.

Q And did she open the door?

A Yes.

Q So then did you, Mr. Blake and Mr. Madigan go through the door?

A Yes.

Q And how were you –

A Me – me and Mr. Blake went outside – I remember me and Mr. Blake went outside the door, outside the pod into the hallway. That's when I was still holding on to his left arm with my right hand.

And as we exited the pod, Lieutenant Madigan was behind us. And then once we – once we hit the corridor, that's when I noticed Inmate Blake really started twisting and like he was trying to get away from me, and I really couldn't understand why he was trying to get away from me.

And once I looked, I saw that Lieutenant Madigan had came up and, like, put his arm through and had a – had his other arm, his right arm, the inmate's right arm with his – I'm going to say his left arm, with Lieutenant Madigan's left arm.

[54] And the inmate was just – Inmate Blake was just – he was just mad. All his frustrations was really toward Lieutenant Madigan. He didn't want him to touch him at all.

Q And you were already through the door at this point?

A Uh-huh.

Q And you were still holding Mr. Blake's left arm?

A Right.

Q What happened next?

A So as – as he was using all his force – I mean, I was – I was still holding him, and I told Lieutenant Madigan again at that time, you know, that I got him, I got him.

But Lieutenant Madigan never let go of his arm. So we were, like, just, I guess you could say like struggling back and forth. And my mind then was like, come on, we still have to put you on lockup, so I'm trying to move toward 7 Bravo, so I'm, like, taking steps as we move him, but he – Mr. Blake, he was – just kept saying, "get off me, [55] get off me," talking to Lieutenant Madigan.

And then at that time, Lieutenant Madigan, I think it was his right hand, threw – like threw – I guess you could say threw a punch towards inmate – Inmate Blake's face.

And once he struck Inmate Blake's face, Inmate Blake was really mad at that time. And what was the question?

Q So at the – when that happened, you were still holding Inmate Blake's –

A Yes, his left arm.

Q – left arm?

So you had Mr. Blake under control at that point?

A Yeah, I mean, I felt that I had him under control, whereas he wasn't going to break away from me.

Q And you told Mr. Madigan "I got him"?

A Yeah, that was my words to him.

Q Did Mr. Madigan say anything in response?

A No.

Q So Mr. Madigan – you said he took a – [56] took a punch at Mr. Blake?

A Yes.

Q Did he make contact with Mr. Blake?

A I believe so.

Q Did you see where on Mr. Blake he made contact?

A No. I'm going to have to say the face area. I'm going to have to say the face area.

Q Was Mr. Madigan's hand in a closed fist?

A I believe so.

Q Did he have anything in his hands?

A Not that I can recollect.

Q What happened after he made contact – Mr. Madigan made contact with Mr. Blake's face?

A Well – well, of course, at that time Mr. Blake became more aggressive. And as we was struggling, I noticed he – all his anger was toward Madigan. It really wasn't toward me. He just wanted Madigan to get off him, don't touch him. That was his whole – his whole thing.

And so at that time, that's when I – if I did – it's like a wall. So I, like – since we [57] was, like, struggling, we had went closer to the wall. And that's when

I just looked – because it seemed like he was – to me, since Mr. Blake was more letting me do something to him instead of Lieutenant Madigan, that's when I looked at Mr. Blake, I just – we were in the hallway, and I looked in his eyes and told him, come on, let's go to 7 B.

And he didn't – he really didn't say anything like okay or anything like that.

So then as we kept going, then that's when I heard – the next I remember, Mr. Blake said, "he hit me again." He was telling me that Lieutenant Madigan hit him again, but I didn't see him – I didn't see Madigan hit him at that time.

But I was constantly looking up at Corporal Woodard too, in the direction I was supposed to go taking the inmate to.

And when he said that, I was like, what? And he said it again. So now I'm like thinking, well, I really got to get him to 7 B now on lockup.

So – but as I'm thinking that, Lieutenant [58] Madigan tells Corporal Woodard to mace inmate – Inmate Blake. And when she said – when he said that, she – I looked at Woodard, and she – she was – she was a fairly new officer, she might have been a CO-I, I'm not really sure at the time, but I just remember her being a new officer at the time.

And she was just looking like she was – you know, like she was scared. And I can't – I remember – I don't even know if she said something or she did – I

just remember looking at her, because I didn't really want her to mace the inmate. And –

Q Why not?

A Because to me, it would have made the situation worse, because – because as my feelings, I was feeling like, you know, I can get him without using mace.

And so then I know Lieutenant Madigan had yelled it out, you know, at the – at Corporal Woodard a second time to, you know, mace him. And then when I looked at her, she had this look in her eyes like – you know, like should I? Shouldn't I? [59] He's – you know, like that.

So I just told her, you know, I told her, don't mace him. I told her call a signal 13, because that means that officer is fighting.

Because at that time, I felt as though we needed some more officers up there.

Q Did you say anything to Madigan?

A No, not – not other than the time that I told him I got him, after we were already into – from out of the pod.

Q Other than that time that you said "I got him," there was no other instance where you said something to Mr. Madigan?

A No.

Q When Mr. Blake said that Mr. Madigan had hit him again, you were still holding on to Mr. Blake?

A Uh-huh, on his – I was on his left – left side, and Madigan was on his right side, inmate Blake's right side.

Q But you weren't watching Mr. Blake?

A No, I was – I was – I would look at [60] Blake, and then I looked up in the direction we was going. I was looking up toward Corporal Woodard. She was like up the hallway a little bit. And that's when I heard Blake said, "Ross, he hit me again."

I turned around and looked at him. That's when I told him, "come on, we going to 7 Bravo."

Q Did you feel Mr. Blake jerk or make any other motions?

A I mean, he was – he never really stopped jerking and moving around, trying to get away. All his aggressions was toward Lieutenant Madigan. And that was another reason why I didn't – I didn't want to let him go, because I – I mean, he still had the opportunity with his feet, so I really didn't want to let him go, because I know he was going to go straight at Lieutenant Madigan with all the aggression that he had and anger towards him.

Q Was Mr. Blake up against a wall at that point?

A No. We was, like, right – right close to the wall, and that's when I told him that we're [61] going to go to 7 Bravo, 7 B.

Q Did he hit against – did his body hit against the wall at any point?

A If anything, his shoulder – his shoulder might have touched the wall, Mr. Blake's shoulder.

MR. CLAFFEE: Okay. We need to change the videotape, so we're going to go off the record and take a short break, like five minutes.

THE WITNESS: Okay.

VIDEO OPERATOR: We're off the record. The time is approximately 11:19 a.m. This is the end of tape number 1.

(Recess.)

(Mr. Goeke joined the deposition.)

VIDEO OPERATOR: We are back on the record. The time is approximately 11:34 a.m. This is the beginning of tape number 2.

BY MR. CLAFFEE:

Q Okay. Mr. Ross, before the break, we were – you were explaining Mr. Madigan asking Ms. Woodard to mace Mr. Blake?

A Correct.

[62] Q And what did you do when Mr. Madigan made that request?

A At that time I informed Corporal Woodard to – not to mace Mr. Blake, to call a signal 13, which means officers fighting.

Q Did Corporal Woodard say anything in response to Mr. Madigan's request to have her mace Mr. Blake?

A I don't recall. I think she – I think she was telling Madigan to let him go, let Ross escort him. I think she was saying that. I didn't really think about it.

Q What did you say signal 13 means?

A It means officers fighting. That means, like, officer needs assistance.

Q Officers fighting each other or fighting an inmate?

A Fighting an inmate. That's what it means, when you hear the words "signal 13."

Q Are there different signals for an officer fighting an inmate versus an inmate initiating a fight with an officer?

[63] A Well, it's – it's another code that they use that officers might use. Let's say if they was calling me, they would tell me to 1025 their unit. And when an officer tells me 1025 his or her unit, I know that pretty much they want me to start on my way to that

unit, that either they are into a confrontation with an inmate and they feel as though it might get out of hand, and they want me to start making my way to the unit.

Q Have you ever gotten a call like that? A 1025?

A Yes.

Q Can you describe the circumstances of that call?

A Like I say, you might – when you hear, it's like other officers is in the area, they're going to start towards that unit.

And, I mean, one instance might have been you're at the unit and the inmate was just arguing with the officer, and the officer might have felt uncomfortable and either he or her decided to let some officers know to start on their unit, because [64] they didn't know the actions of the inmate, what they were going to be.

Q What's the difference between the 1025 and a signal 13?

A Well, 10 – 1025 is, like I say, when – when they are maybe arguing or they think it might be a physical confrontation with the inmate. Signal 13, when there is a physical confrontation with the inmate.

Q So you told Corporal Woodard to call the signal 13?

A Yes.

Q Why did you tell her to do that?

A Because at that time, I wanted to get more officers on the scene as quickly as possible, and I felt I didn't want the situation to get any worse.

Q Why didn't you call the signal yourself?

A Because I was engaged with Mr. Blake. It would just be – because she had her hands free.

Q You were still holding Mr. Blake's left arm?

A Left arm.

[65] Q What was Mr. Madigan doing at this point?

A At this point, I really – I really couldn't tell you what he was doing. I just know he was on the other side. I didn't really – everything was happening so fast that once I heard him tell her to mace him, I decided then to just take complete control of the whole situation.

And once I know I told Corporal Woodard to call a signal 13, the other officers are going to be coming as fast as they can. And I know the adrenalin level was going to be high.

Q Did you say anything to Mr. Madigan at that point?

A I don't – I don't recall at that point. I said something to Inmate Blake once I –

Q What did you say?

A I told Inmate Blake that me and him was going to go to the floor because I know the other officers were coming, and I didn't – well, I told him that we was going to go to the floor. The reason I said that was because I didn't want me and him to be standing up going through this physical [66] confrontation when the other officers come.

Q Were you and Blake in a physical confrontation at that point?

A We was still – I mean, the whole time, me and him was still – I mean, he was still twisting and turning the whole time. He never stopped.

Q To try to get away from Mr. Madigan?

A It's like – at the time thinking that Madigan still had hold of him, he was still trying to get off. But he was – he was mad at Mr. Madigan, so he was – I think his intention was to get Madigan off of him.

Q Was he mad at you?

A I really don't think he was, no, to my knowledge.

Q What did – what did Blake say – Mr. Blake say to you when you told him you were going to take him to the floor?

A He said okay.

Q So he agreed to be taken to the floor?

A Uh-huh. Oh, yes. Sorry.

Q So Mr. Blake was compliant at that point [67] with your instructions?

A He was compliant verbally, but he was still – he was still struggling. I mean, never stopped. Even though he said okay.

And when – when I – when I attempted – we was, you know, going to the floor, I'm thinking it was going to be nice and easy, go to the floor.

But he – but to me, once we tried to go to the floor, I noticed he wasn't – wasn't coming to the floor. So I figured – I said maybe he changed his mind.

And so – so then as we – I went on and started going to – I said, well, if I go to the floor, he going to have to come with me, because I'm still holding on to his arm.

But then for some reason, his foot had crossed and hit – hit my foot, so we end up instead of me going down control, we – once I got tilted over, we was falling to the floor.

So we went on and fell to the floor. I remember hitting the floor, and Inmate Blake hit the floor right – right beside me, and Lieutenant [68] Madigan had hit the floor on the other side of Blake.

And at that time, it seemed like Mr. Blake was, like, really frustrated because he was like, you know, get me up, like – he was telling me to get him up off the floor.

So I told, you know, Madigan to get off him. We all on the floor. And then I told him, I said, "I don't want to get you off the floor, because the team going to be in another couple seconds," and I'd take him off the floor then.

So at that time, that's when the team started arriving on the floor, the response team.

Q Is there a procedure for taking a prisoner – an inmate to the ground in a controlled manner?

A I don't think there's a procedure.

Q Did you receive any training on how to take an inmate to the floor?

A No. I don't recall any training how to take him to the floor.

Q Prior to this time, had you had any other [69] occasion to take an inmate to the floor?

A No.

Q Have you ever seen anyone else take an inmate to the floor?

A Yeah, I'm pretty sure I have seen take an inmate to the floor.

Q And how did the guards take the inmate to the floor in those instances?

A Just grab them and throw them to the floor.

Q How did they throw them to the floor?

A Most of the time, if they were going to take them to the floor, they would just wrap their arms around them and then both of them just fall to the floor.

Q Is that what you were trying to do with Mr. Blake?

A Right. And since he had agreed, my intention was he was just going to come with me going to the floor, instead of kind of resisting me, him just going – like go to the floor, like we just going to lay down on the floor.

[70] Q Were you trying to take Mr. Blake to the floor so that he would be face down or on his back?

A I didn't – I wasn't thinking about whether he – I was going to face him down on the floor or have him on his back on the floor. I think he ended up on his side, he was on the floor.

Q So you were –

A The reason we went to the floor was to me for – just for his protection, so that when the response team arrived, they would see that the – that I had control of the inmate, so I know that once they saw that, then they wouldn't really, you know, interact with us, they would just be like, you know, okay, you don't need us once we get there.

But if it was an instance whereas we're still struggling, then they are probably going to take him to the floor.

Q You were still holding Mr. Blake –

A Left arm.

Q His left arm with your right arm, with your right hand?

A Right, uh-huh.

[71] Q So did you try to take him down by pushing him backwards or pushing him forwards?

A We were – we were both going forward.

Q Toward. So he would have ended up face down?

A Yeah, he probably would have ended up –

Q Did he end up face down?

A He ended up, we went to the floor, he ended up on his side – I believe it was – I believe he was on his side, because I know I was on my side, and he was right – right in front of me, so I think he was on his side, his left side too.

Q You were on your left side?

A Uh-huh.

Q So did you land on top of him –

A No.

Q – or next to him?

A No. I think I hit the floor first, and he came behind me, right in front of me. And then Lieutenant

Madigan, I'm not sure, but I know he was maybe in front of – maybe in front of Inmate Blake. But I know he was down a little bit lower than, you [72] know, me and Blake.

Q Was Mr. Madigan on his back or on his chest?

MR. SACHSE: I'm sorry, on his own back or on Blake's back?

BY MR. CLAFFEE:

Q On his own back?

A I don't really recall.

Q But you landed on your side?

A Right.

Q Your left side?

A Right.

Q And Mr. Blake landed on his own left side?

A I believe.

Q Was Mr. Madigan assisting you in taking Mr. Blake to the ground?

A I don't really – I don't know.

Q How did Mr. Madigan end up on the ground?

A When – when I told Mr. Blake that we was going to the floor, once I told him, he said okay, and we just proceeded to the floor. I mean, I don't know what Lieutenant Madigan was doing at that time.

[73] Evidently, he was still holding on to Mr. Blake, and so that's probably what made – since we were going to the floor, that's probably what made him come to the floor. I believe that's when both of us fell. Since he was holding on to Mr. Blake, he had no choice but to. He would let go or fall to the floor too.

I mean, he might have – I don't know if he heard me say that to Mr. Blake or not. Maybe he didn't know what was going on. I don't – I don't know.

Q So you don't know how Mr. Madigan ended up on the ground?

A No, I just assumed that he was still holding on, so when we hit the floor, if he's still holding on, then he's going to hit the floor.

Q Did you sustain any injuries as the result of hitting the floor yourself?

A I know when I hit the floor, my – and lost my balance, my knees, I came straight down on my knee, so I had an injury to my knee. I think my left knee, I think. I'm not really sure.

[74] Q You came straight down on your knees?

A Uh-huh. Yes. Oh, sorry.

Q I thought you landed on your left side.

A Right. My knees hit first, and then I – the rest of my body fell on over to the left side.

Q What –

A But as – as I'm – as we're going to the floor, it's like I lose my balance. So that's what makes me come straight down to my knees, and then – me and Mr. Blake, and then – and then over to the floor.

Q While you were going to the floor, was Mr. Blake showing any aggression towards you?

A No. But it seemed like if I had just told him that we was going to the floor, he agreed, I couldn't understand why he was resisting more than – you know, than let's just – which made me lose my balance, because, you know, I don't know if something prevented him from coming with me to the floor.

Q Could Mr. Madigan have been preventing him from going with you to the floor?

[75] A It's possible.

MR. SACHSE: Object. I'll just put that on the record.

MR. CLAFFEE: I'm sorry, Doug, what was that?

MR. SACHSE: I was just objecting for what might have happened as opposed to what he actually saw happen.

BY MR. CLAFFEE:

Q Mr. Ross, did you have any injuries to your knees prior to this incident?

A No, not that I can think of.

MR. CLAFFEE: I'm going to ask the court reporter to mark this as Ross 1.

(Ross Exhibit 1 identified.)

BY MR. CLAFFEE:

Q Mr. Ross, did you submit a claim for a work-related injury on or about June 22, 2007?

A Yes.

Q Is Exhibit Ross 1 the claim that you submitted?

A Yes.

[76] Q Is that your signature at the bottom of the first page?

A Yes.

Q And also on the bottom of the second page?

A Yes.

Q You say in this claim, when it – when it asks you to explain how the injury occurred, that you were involved in a fight with inmate – Inmate Blake Shaidon?

A Right, correct.

Q But you weren't actually in a fight with Mr. Blake, were you?

MR. SACHSE: Objection.

THE WITNESS: I mean, what's a fight?

BY MR. CLAFFEE:

Q You tell me how you would define the word "fight."

A I think a fight is when, you know, both parties are probably actually making contact with each other with, I guess, objects or – or fists.

Q Were you engaging in any conduct with Mr. Blake involving objects or fists?

[77] A No.

Q Was Mr. Blake engaging in any conduct with you with any objects or fists?

A Huh-uh, no. No.

Q So you weren't in a fight with Mr. Blake, were you?

A No, I wouldn't say it was a fight. It was – I guess you could say we were – we were struggling, just trying to maintain control, I think that's what it was. I wouldn't say it was a fight.

Q But you wrote on this claim form that you were involved in a fight?

A Okay.

Q So that's not accurate?

MS. RICE: Objection.

THE WITNESS: No – no, I think that once you – once you do that, I think that you just – might

have just mispronounced your words when you said a fight. I could have said struggle, but at the time, I don't know why I put a fight.

BY MR. CLAFFEE:

Q You can put that aside.

[78] After you and Mr. Blake and Mr. Madigan all ended up on the ground, what happened next?

A The response team arrived, and I know at that time Mr. Blake was – was escorted to medical unit.

Q Do you know who escorted him to the medical unit?

A No, I don't really recall. It was a lot of officers at the time.

Q Do you know why he was escorted to the medical unit?

A Because any time there's any kind of confrontation between an officer and an inmate, you have to – you know, even though they may still – he's going on lockup, he has to go to medical to make sure he didn't sustain any injuries or anything like that.

Q Approximately how much time passed between when Corporal Woodard called for a signal 13 and when the officers arrived?

A It don't take them long – under a minute. It can be anywhere from – all depends on where the

[79] officer is located. So it could be from a couple seconds – I think it never went past a minute, so no matter where you're at.

Q You said it could be anywhere from a couple seconds to a minute. Do you know how long it was?

A No, I don't – I'm just – I mean, I can – say 45 seconds to a minute approximately.

Q Do you wear a watch when you're on duty?

A Yes. I mean, I don't know if I had one on that day, but –

Q Is there a clock in the hallway, in the corridor?

A Yes.

Q Did you look at your watch or the clock at any point?

A No, I don't remember looking at no watch or clock. I don't even know if there was a clock in the hallway at the time.

Q Do you know approximately how long between the first time Mr. Madigan punched Mr. Blake and Corporal Woodard called the signal 13?

[80] A I'm going to say – I mean, everything moved so fast, so I'm sure everything was seconds, I mean under – I'm going to say under a minute.

Q Under a minute between the first hit and when –

A Woodard called the signal 13. Yeah, it was moving pretty fast.

Q After the first hit, Blake told you that Mr. Madigan had hit him; right?

A No, I think Blake told me after the second hit, I believe, I think. Because when he told me that he hit him, I didn't see that – I must was looking toward Corporal Woodard, and I heard him say that he hit him, and that's when I turned around. And that's when –

Q And then you took him and –

A That's when I told him, you know, come on, we going to go to 7 B. And then as we – I think I took him to the floor – I'm getting kind of mixed up, trying to remember it all over again.

Q One step at a time. And so you said "come on, we're going to go." That was after the second [81] hit, you said?

A Yes.

Q Okay. And then at some point, Mr. Madigan asked Corporal Woodard to mace Mr. Blake?

A Right.

Q And you told Ms. Woodard instead to call a signal 13?

A Correct.

Q And all of that happened in under a minute?

A Yeah, it's – it's possible. I mean, it was moving real fast. Everything was happening (indicating) back to back to back to back now, that's it. It was moving pretty fast.

Q It could have taken longer than a minute, though?

A I mean, it could have, possibly. But – it's possible. I mean, I didn't – I wasn't really watching the time.

Q This all took place after you got through the door, the pod door; right?

A Right.

[82] Q How much time had passed between when you went to retrieve Blake from his cell to when you got through the pod door?

A Hmm. I think the whole incident took about four to five minutes.

Q After you observed Mr. Madigan strike Mr. Blake in the face, you said you didn't say anything to Mr. Madigan; is that right?

A Right, I don't think so.

Q Why didn't you say anything to Mr. Madigan?

A Because, I mean, me and him was struggling so much, I guess when – when I noticed that he struck him, it kind of surprised me.

Q Why did it surprise you?

A Because I didn't know the reason why he struck him, because I mean – because if I had a hold of him and I felt as though I was, you know, pretty much had him, I mean, I didn't know why he struck the inmate.

And so right then, I was just like, I guess, kind of shocked even when it happens. And my [83] whole thing then was, okay, well, it happened, let's keep moving, like that.

Q And then Mr. Madigan struck Mr. Blake a second time?

A That's what I heard.

Q Why didn't you say anything to Mr. Madigan after the second time he struck Mr. Blake?

A I'm not sure that – I might have told him I got him again. I'm not sure. But I remember at that time, that's when I decided we going to go to this floor, I'm just going to take control of the whole situation and get this inmate down and show that I have control over this inmate.

Q Did you at any point tell Mr. Madigan to stop striking Mr. Blake?

A I don't believe so.

Q Did you at any point tell Mr. Madigan to stop trying to grab hold of Mr. Blake's arm?

A I remember telling him that I – that I got him, which meant, you know, you can let him go and let me just take full control over him.

Q After the incident was over, you said [84] Mr. Blake was taken to the medical unit?

A Yes.

Q Did – did you seek medical attention immediately after the incident?

A I wasn't – I don't recall if I went to – I'm sure I probably went to Concentra that night or the next day, I'm not really sure.

Q Do you know if Mr. Madigan went to seek medical treatment?

A No, I do not, I don't know if he was injured or anything.

Q Did you speak to anyone immediately after the incident about the incident?

A Well, of course, you have to – after that, you have to write your report, you going to talk to your supervisors.

Q Who was your supervisor?

A I think it was – I don't know the rank at the time, Ms. Peay.

Q Ms. Peay?

A Yeah, I think Cherie Peay. I don't know if she was a captain at that time or major. I can't [85] remember.

Q Approximately how long after the incident did you talk to Ms. Peay?

A Probably 10, 15 minutes, I guess.

Q Where did this conversation take place?

A In – it might have been down on the first floor in her office. I'm not really sure.

Q What did you say to Ms. Peay?

A Supervisor, first thing, she's going to ask what happened. And then once I just explained what happened, she's going to say all right, she's going to say write a report and give her the report.

Q Is that, in fact, what she said, she told you to write a report?

A I really don't know that was her exact words. Only thing I do remember is talking to the warden. I remember talking to the warden in her office about the incident.

Q Was that before or after –

A That might have been – that might have been the next day.

* * *

[102] BY MR. CLAFFEE:

Q So someone must have said something to you?

A Yeah, to spark that – that thought in my head. Because I'm not just going to automatically think that he has the keys to the pod and striking an inmate.

Q So there was a time between your incident and you writing your report where you came in contact with other officers, and there was discussions about the incident?

MS. RICE: Objection.

THE WITNESS: I wouldn't really say discussions. It's – it's like – well, of course every – every officer in there that you pass is going to say something, how did they know you was involved in this signal 13. Everybody is going to be saying stuff. I mean, you can be here, I could [103] be getting my papers to get ready to write it, you're passing the same officer that might have came up, so all you all is one group. So, I mean, somebody could have said something then, I mean.

But I don't have any conversations in my ears just to hear something like that.

BY MR. CLAFFEE:

Q You did pass some officers before you got –

A Oh, I'm sure I passed a lot of officers.

Q But you don't recall which officers?

A Right.

MR. CLAFFEE: I'm going to ask the court reporter to mark this Exhibit Ross 4.

(Ross Exhibit 4 identified.)

BY MR. CLAFFEE:

Q Mr. Ross, do you recognize this exhibit?

A Yes.

Q What is it?

A It's the floor plan for the seventh floor of MRDCC.

Q Does it appear to be a fair and accurate [104] representation of the seventh floor at MRDCC?

A Yes.

MR. SACHSE: What did you say, floor plan?

THE WITNESS: Yes.

MR. SACHSE: Thanks.

BY MR. CLAFFEE:

Q Can you indicate where on this map – can you mark with this red pen with a number 1 where on this map Mr. Blake's cell was when you went to get him.

A I would say approximately here. You said mark with a 1?

Q Yes, please. You can keep that in front of you.

So you reported to Mr. Blake's cell?

A Correct.

Q With Mr. Madigan?

A Correct.

Q And you placed your cuffs on Mr. Blake?

A Correct.

Q And escorted him out of his cell?

A Correct.

[105] Q And right away, Mr. Madigan was trying to grab Mr. Blake's other arm; is that right?

A Yes, once we exited the cell.

Q Once you exited the cell.

A Uh-huh.

Q And Mr. Blake resisted Mr. Madigan's efforts to put his hand on his arm?

A Correct.

Q But you didn't say anything to Mr. Madigan at that point?

A No, not at that point.

Q And you didn't do anything else as a result of Mr. Madigan trying to place his arm on Mr. Blake and Mr. Blake resisting?

A No, because once he tried to place his arm, Mr. Blake resisted, Mr. Blake didn't do anything after that. By the time we was completely outside the cell. And we started towards the steps.

Q And can you indicate on the map with a number 2 which steps you then went down?

A Yes.

Q So approximately how far away from the [106] cell are those steps?

A It's about 8 feet.

Q About 8 feet. So about how long did it take you to get from the cell to the top of the steps?

A A couple seconds.

Q And then you proceeded down the steps, and you were holding on to Mr. Blake's left arm?

A Correct.

Q And Mr. Madigan was slightly behind Mr. Blake?

A Correct.

Q And he was trying to grab Mr. Blake's right arm on the steps?

A That's what I seen once we got toward the bottom of the steps. Because at that time, Mr. Blake had started twisting again like, you know, for – like he did before, when Mr. Madigan touched him at the top of the steps.

Q On the steps, he was twisting?

A Yes.

Q And Mr. Madigan was trying to grab hold of [107] his arm?

MR. SACHSE: Objection.

THE WITNESS: That's what I assumed, I didn't see, that he was trying to do. But that's what I assumed he was trying to do. I didn't see. Mr. Blake was twisting like get off me type.

BY MR. CLAFFEE:

Q And you didn't say anything at that point to Mr. Madigan?

A At that point, I told Mr. Madigan that I got him, that, you know, I could escort him.

Q Mr. Madigan didn't do anything in response or say anything in response?

A No, he didn't say anything at all, not to my recollection.

Q And you didn't do anything else besides tell Mr. Madigan that you got him?

A No.

Q About how long did it take for you to get down that flight of steps?

A A couple seconds.

Q How many steps are there?

[108] A I'll say approximately 12.

Q And where did you proceed after the steps on this map?

A Toward the front door where the officers desk was.

Q And where is the officers desk on this ma'am?

A Put a number 3?

Q You can put a number 3 there, sure. Okay.

And is the door, then, right by where you put the number 3, maybe under the letter E on this map?

A Yes.

Q So then you proceeded through the door. About how long did it take to get from the steps to the door?

A From the steps to the door? It's not going to take long. I mean, a couple seconds.

Q Approximately how far from the bottom of the steps is that door?

A About 30 feet, I guess.

Q It was after you got through that door [109] that you observed the first punch from Mr. Madigan to Mr. Blake, who was on the other side of the door?

A Yes.

Q Can you mark with a number 4 approximately where you were when that first punch took place?

And you observed that first punch; correct?

A Correct.

Q And you didn't say anything to Mr. Madigan after that punch?

A Correct.

Q And you didn't do anything else after that punch?

A I continued to try to get him to go with me to 7 B, I remember that.

Q Continue escorting Mr. Blake by his left arm?

A Right.

Q And after that first punch, you looked away from Mr. Blake and Mr. Madigan?

A Because then, I – it intensified more, I guess, once the punch was thrown. So now – so now, [110] you know, me and him, we were rocking back and forth, and I'm looking toward I guess where I have to be going at the time, toward 7 B, up the hallway. I'm

looking up the hallway and looking back at him at the same time, like that.

Q If Mr. Madigan had just struck Mr. Blake in the face and things were intensifying, why weren't you watching what was going on between Mr. Madigan and Mr. Blake?

A Because I'm – at that time, it's like I'm looking at him but I'm – I mean, everything happened fast, so I'm looking at him and I'm looking at the direction where I'm going at too. And I don't know. I mean, I guess just – my whole goal then was to try to get Mr. Blake to 7 Bravo. Thinking that no further incidents were going to happen.

Q You said earlier that there's a signal, I think you called it a 1025?

A Right.

Q And you said that the difference between that signal and a signal 13 was that a 1025 is when [111] you think something might happen; is that right? Is that accurate?

A Yes.

Q How come you didn't call a signal 1025 after Mr. Madigan struck Mr. Blake the first time?

A I don't know why I didn't call.

Q Did you think that there was a chance that Mr. Madigan might strike Mr. Blake again?

A No, I didn't – no, I wasn't thinking like that, that he was going to strike him again. I wasn't thinking like that.

Q But they were continuing to struggle?

A Yes, all of us, all three of us. Like I say, Mr. Blake was – his whole thing was he didn't want Madigan touching him at all.

Q But Madigan continued to touch him?

A Yes.

Q And you didn't tell Mr. Madigan to stop touching him?

MS. RICE: Objection.

THE WITNESS: No, not at – I don't think not right at that time. I know I told him on [112] different occasions, but I don't recall whether I told him right then.

BY MR. CLAFFEE:

Q Did you tell him on more than one occasion or just that one time on the steps?

A No, I was just telling him, I got him. On the steps. I think I told him another time once we – once we got out into the hallway, I think.

Q When would that have been?

MS. RICE: Objection.

THE WITNESS: My train of thought – I mean, if I said it then, I can't remember if I said it now.

BY MR. CLAFFEE:

Q So then Mr. Blake told you that Mr. Madigan had struck him again; is that right?

A Right.

Q But you didn't see that punch?

A Right.

Q Because you were looking away?

A Right, yeah. Because he told me – I remember hand in front of him, I was waiting – he [113] said he struck me again. That's when I turned around, and I was already looking that way. Then – I mean, I didn't see anything. And that's when we were still struggling. Then that's when he told Woodard to mace him.

Q After Blake said that he hit him again, then were you watching Mr. Blake and Mr. Madigan or were you still looking towards Corporal Woodard?

A I mean, I'm looking everywhere. I'm not just concentrating, I'm not going to look at you, looking at Woodard the whole time. I'm still making contact with the – Mr. Blake too, because me and him was engaged. And I'm trying to get him to focus on me so we can – because I know with me, he was – seemed to be more calmer then, he didn't want no parts of Mr.

Madigan. So I was trying to get him to focus on me, to – you know, let's just go, let's just go toward 7 B, where we had to go.

Q Do you know how many punches were thrown?

A No.

Q You saw one; right?

A Right.

[114] Q And you heard about one?

A I heard one.

Q Could there have been other punches thrown?

MR. SACHSE: Objection.

THE WITNESS: It's a possibility.

BY MR. CLAFFEE:

Q The first time that Mr. Madigan tried to hold Mr. Blake's arm was right after you took Mr. Blake out of the cell; is that right?

MS. RICE: Objection.

THE WITNESS: Right.

BY MR. CLAFFEE:

Q And that was also the first time that Mr. Blake indicated that he didn't want Mr. Madigan holding his arm; is that right?

A Right.

Q Did you get the sense at that time that there might have been something going on between Mr. Blake and Mr. Madigan?

MS. RICE: Objection.

THE WITNESS: I mean, yeah, because he – [115] because he made – Mr. Blake said in his statement, he didn't come up to see what I want the first time, so don't come up now. So right then, I think that he didn't want to see the lieutenant at all, because he thought well, he didn't come up I guess to see whatever complaint he might have had earlier that day, that he didn't want to see him to come lock him up.

BY MR. CLAFFEE:

Q So if a 1025 is called when something might escalate, how come you didn't call it at that first time right after you got out of the cell?

A Because I didn't need to. I mean, you don't just automatically call a 1025. I think that's something if the officer feels as though, you know, they – they can't, you know, handle the inmate or something like that, or inmate might jump on them, so they want us to start on our way up there.

But, I mean, I never felt threatened by Mr. Blake at all so – so it's like I don't – I wouldn't see me calling a 1025, because, I mean, [116] I – I would have had control of Mr. Blake.

Q You would have had control of him if Mr. Madigan hadn't been trying to grab his other arm?

MR. SACHSE: Objection.

THE WITNESS: I think so, because that was his whole – Mr. Blake's whole complaint, you know, toward Mr. Madigan. It wasn't toward me at all.

BY MR. CLAFFEE:

Q So you didn't –

A He agreed that, you know, he was going to let me escort him to lockup.

Q So you didn't make the call then, and you get to the stairs and there's a struggle. Then you get through the door, and Mr. Madigan punches him, and you still don't make any call.

A Right.

Q Why not? Hadn't the incident escalated at that point?

MS. RICE: Objection.

THE WITNESS: But the incident – even though the incident escalated, it's happening – [117] happening real fast. I mean, this incident is taking a couple seconds. And once – you know, once he – once he hit him, I was like, well, let's – you know, it's like he's the lieutenant, I'm the sergeant, let's – let me just keep it going. And he – he said – once Blake said

the second time that he hit him, then he told Woodard to mace him, was like, well, let me just take him to the ground and get some more officers up here, because somebody – it was escalating, to me, at that time.

MR. CLAFFEE: Okay. We're going to stop just to change the tape real quick, go off the record.

THE WITNESS: Okay.

VIDEO OPERATOR: We're off the record. Time is approximately 1:00 p.m. This is the end of tape number 2.

(Recess.)

VIDEO OPERATOR: We are back on the record. The time is approximately 1:06 p.m. This is the beginning of tape number 3.

BY MR. CLAFFEE:

[118] Q Before the break, you said that one of the reasons you didn't feel like the –

MS. RICE: I think we lost Doug.

MR. CLAFFEE: Oh, we did?

MR. SACHSE: No, I'm here.

MS. RICE: Oh. The light went off.

MR. SACHSE: Sorry. Now you did.

MR. CLAFFEE: Doug? Can we go off the record?

VIDEO OPERATOR: We're off the record. The time is approximately 1:07 p.m.

(Discussion off the record.)

VIDEO OPERATOR: We are back on the record. The time is approximately 1:12 p.m.

BY MR. CLAFFEE:

Q Before the break, you had mentioned that one of the reasons that you didn't feel the incident had escalated was because it had all only taken a few seconds. Is that what you said before, one of the reasons?

A Yes, I guess so.

Q Before that, you had mentioned that it [119] took a few seconds to get from Mr. Blake's cell to the top of the steps, that was about 8 feet; right?

A Okay.

Q And then you had to go down –

A Yes.

Q – 12 steps?

A Yes.

Q Right. And then it was about 30 feet from the steps to the desk?

A Yes.

Q And then you had to go through the door and into the corridor?

A Yes.

Q So if it took a couple seconds to just go the 8 feet from the cell to the steps, I'm guessing it took a bit more than a few seconds to go from the cell door to the corridor?

A From the cell –

Q From Mr. Blake's cell into the pod corridor.

A Oh, to come completely out into the corridor?

[120] Q Yeah.

A Yeah, you could still do it all in – you just walk right on out. It ain't going to take – not going to take that long.

Q Could it have taken a few minutes?

A I mean, it could, but I don't think it took a few minutes to get from his cell, escorting him from his cell out into the corridor itself. I mean, because the only hesitation was when I – when I first – when he first came out, and at the bottom of the steps, when he struggled, but that wasn't nothing but him struggling – Blake struggling with me, because Madigan had touched him, and I told to Madigan that I got him. And once Madigan must have let him go because he didn't struggle anymore, we just walked straight to the steps, and I told Officer Fields to move out of the way as we were exiting the door –

Q So Ms. Fields had to open the door?

A No, Ms. Woodard.

Q Ms. Woodard. So the door was closed?

A Correct.

[121] Q And you had to wait for that to be opened?

A Correct.

Q So you had to stop at the door as well?

A I don't recall if I had to really stop, because most of the time if we going on the unit to lock somebody up, the person that's in the hallway is – watches us, watch our back, so Woodard could have been standing at the door, the door had glass where – so she could be watching as I'm coming down, she could have the door – open up the door, so I could just come straight out the pod.

But I don't really recall if I had to stop at the door when she opened it, or as soon as I got to the door, she can swing the door right open. I don't think I knocked on the door, if I had to come down to open it. I don't recall that.

Q You also said that you didn't feel the incident was truly escalating until Mr. Madigan told Corporal Woodard to mace Mr. Blake; is that right?

A Right, uh-huh.

Q So you didn't think it was – you didn't think the first punch that Mr. Madigan threw was an [122] escalation?

A Yeah, it was – it was a escalation. But the way I was thinking at that time was my objective was to get Mr. Blake to 7 B, to lockup. And I think that at that time, I was still thinking you go still – even though he hit him, I still have to get him to lockup. I think that's what – my way of thinking at that time.

And then after the second blow, I probably was still thinking that, but in my mind now, and it's like, no, something is going wrong, let me just – let me just take control of the whole situation, because now that's like it isn't – in my mind, it was just out of hand. And now I know that – let me take Blake to the floor – I think when I said signal 13, because I wanted officers to come up there as fast as they can, not to be on their way, just to get up there, let's end this situation now. I think that was my way of thinking.

Q And you also mentioned that Mr. Madigan was the lieutenant and you were the sergeant.

A Right.

[123] Q Is that one of the reasons why you didn't say anything to Mr. Madigan or do anything after the first punch?

A No, I don't – I don't think – because he was a lieutenant? Because, I mean, I don't know his reasons, what he was – what was really happening on his end of Mr. Blake. I don't know, Mr. Blake could

have been kicking him, because I don't know all his – all Mr. Blake's aggressions was going toward Lieutenant Madigan. So, I mean, I wasn't thinking because –

Q Did you observe Mr. –

A No, what were you going to say?

Q Did you observe Mr. Blake kick Mr. Madigan?

A No, I didn't.

Q And you were still holding his left arm at this point?

A Yes.

Q Why did you feel the need to take Mr. Blake to the floor?

A Because when – once the signal 13 was [124] called, I know that the responding officers are going to be responding and their adrenalin is going to be real high. And I didn't want them to come into a situation that they think that was still uncontrollable, because then they are going to come and he's going to go to the floor.

So I wanted to take Mr. Blake to the floor before they arrive so that they can see that the situation was under – under control in their eyes, once they responded and they – their first view of the incident, of the scene.

Q I believe you also testified earlier that you wanted to show Mr. Madigan that you had Mr. Blake under control. Was that right?

A After taking him to the floor?

Q Yeah.

A That – that could have been possible. For me to just take over the whole situation would have shown Lieutenant Madigan that, you know, the situation is over, he's, you know, on the floor, no threat to nobody, that it's over.

Q So did you take Mr. Blake to the floor to [125] show Madigan that the situation was over or to protect Mr. Blake from the response team?

MS. RICE: Objection; compound question.

THE WITNESS: I think I took Mr. Blake to the floor to end the whole situation, to do everything, just to show, I guess, to Madigan and the response team that, you know, the situation was over. I think that's why I took Mr. Blake to the floor.

BY MR. CLAFFEE:

Q And you ended up on the floor. You were on your left side, and Mr. Blake was on his left side?

A I believe.

Q Were you ever on top of Mr. Blake at any point?

A No, I wasn't on top of Mr. Blake.

* * *

[138] Q I'm just saying, let's go back to page 2 of Ross Deposition Exhibit Number 2.

A Okay.

Q And I think one, two, three, four, five, six – six lines down, you indicate that Madigan was saying to the above inmate, "you will have a hearing but you still have to go on lockup."

A Correct.

Q And you think that was correct?

A Yes.

Q How would you characterize the way this was said by Lieutenant Madigan?

A In a calm manner.

Q Okay. And apparently after that, you went in and put the handcuffs on Inmate Blake after he had packed up his belongings; correct?

A I wasn't – to tell you the truth, I don't know if he packed his belongings up or not.

Q Okay. You don't recall at this point in [139] time?

A Right.

Q All right. But you were the one who put the handcuffs on him?

A Correct.

Q And that was behind his back; right?

A Correct.

Q And then you escorted him out of the cell and towards the steps, if I understand this correctly.

A Correct. Correct.

Q And it was at that point in time at the top of the steps that Lieutenant Madigan grabbed – I guess, was it his right arm, standing behind him?

A Yeah, yeah, Inmate Blake's right arm.

Q I'm sorry, didn't hear that.

A He – Lieutenant Madigan grabbed Inmate Blake's right arm at that time.

Q And that was the point in time when Inmate Blake objected to having Lieutenant Madigan touch him; right?

A Correct.

[140] Q And let me refer you again to Ross Deposition Exhibit Number 2. On the top of page 3, you wrote that Inmate Blake "said 'get the Fuck off of'" – "'get the Fuck off of me.'" Is that your recollection of what he said?

A Correct.

Q So at that point in time, Inmate Blake was not requesting but he was ordering Madigan not to touch him, not to touch him; is that correct?

MR. CLAFFEE: Objection.

THE WITNESS: Yes. He didn't – he didn't want Madigan to touch him at all.

BY MR. SACHSE:

Q Okay. And is that normal procedure that it's up to the inmate to determines who will touch him or who will escort him throughout the prison?

MR. CLAFFEE: Objection.

THE WITNESS: No.

BY MR. SACHSE:

Q Now, you said you started going down the steps. Give me a moment. And as you were going down the steps, was – was the inmate – you [141] indicated at some point in time, and I'm just not sure when, he started getting rather – he was twisting his shoulders and bobbing his head, I believe you said.

How was he acting as you were walking down the steps?

A As we first started walking down the steps, he was – he was pretty calm. Then when we got toward the bottom of the steps, he started twisting. It was my recollection that he was twisting because Lieutenant Madigan had touched him again toward the bottom of the steps in escort –

Q I'm sorry. Not being there makes it a little bit more difficult, I apologize for interrupting.

So there was the little incident at the top of the steps where inmate Madigan told – I mean, I'm sorry, Inmate Blake told Madigan to get the fuck off of me.

A Correct.

Q And then walked down the step – you walked down the steps with Inmate Blake, and there [142] was no incident until at the bottom of the steps; is that correct?

A Correct.

Q And then from your recollection, apparently Lieutenant Madigan again touched Inmate Blake; is that correct?

A Yes.

Q And that's when Inmate Blake became more restless and started twisting and moving his head and shoulders?

A Yes.

Q And according to the statement that you wrote, and I'm looking on page 3, it looks like four lines down, I think that's the point in time where you indicated that Blake said to Madigan, "'get the Fuck off of me Lieutenant sgt. Ross got me you didn't Come talk to me before so don't touch me now.'" Is that correct?

A Correct, even though I didn't see what you read. Correct. That sounded correct.

Q I'm sorry, even though you didn't think what? Didn't hear that.

[143] A I said even though I didn't see what you was reading, correct. That sounds correct.

Q Okay. If you need time, let me know. Like I said, not being there, I can't tell what you're doing or what you're not doing.

MS. RICE: It says 24 at the bottom.

BY MR. SACHSE:

Q Can you describe the inmate for me, Inmate Blake, his size?

A His size?

Q Yeah. Is he – you know, how tall? How heavy is he? How does he compare to Lieutenant Madigan?

MR. CLAFFEE: Objection; compound.

THE WITNESS: I'd describe him about 5'9", about 200 pounds.

BY MR. SACHSE:

Q That's Inmate Blake?

A Yes. Madigan was – he might have been around the same height, but I think Madigan was heavier in weight.

Q Okay. Okay. Now, I think at the bottom [144] of the steps is when you indicated to Lieutenant

Madigan that – that you thought you had him, but that Madigan didn't respond to that; is that correct?

A Correct.

Q And then you've got over to the – you said – let me go check my notes again – that you were walking towards the desk and towards the door, and Inmate Blake started twisting, trying to get away, he was mad and all of his anger was directed towards Madigan; is that correct?

A No, once we got – once we got to the bottom of the steps, he – he – Inmate Blake, he didn't do anything. He walked toward the door to leave the unit.

Q Uh-huh.

A But, I mean, you could tell he was still – you could tell he was still mad at Lieutenant Madigan.

Q Okay. And, again, I'm not trying to tell you what to say. I just have some notes, and I want you to tell me.

[145] A Okay.

Q I have that Inmate Blake started twisting and trying to get away, and he was very mad. Was that before going through the door or after going through the door?

A It was before going to the door.

Q Okay. And as you went through the door, you indicated you were on the inmate's left?

A Yes.

Q And you were looking essentially where you were going and trying to keep hold of the inmate at that time? Did I say that correctly?

A Correct, yeah.

Q Okay. And so you got into the hallway, and you – tell me when you first saw Lieutenant Madigan punch the inmate.

A Right after we exited the – the door, Lieutenant Madigan had grabbed the inmate, Inmate Blake's right arm, and Inmate Blake was really struggling back and forth in –

Q He was very angry that the lieutenant would touch him?

[146] A Yes. And his – and once we took approximately maybe three to five steps, that's when I noticed – I looked at the inmate, and I noticed Lieutenant Madigan had struck him in the face with his right hand.

Q You – Lieutenant Madigan touches Inmate Blake again.

A Uh-huh, yes.

Q And you move three to five steps. And during that three to five steps, were – were you generally looking where you were going?

A I was looking both ways, where I was going and back at the inmate.

Q And back at him.

A Yes.

Q Is it possible that at any point during those three to five steps while you were looking away, that the inmate attempted to headbutt or kick Lieutenant Madigan?

MR. CLAFFEE: Objection.

THE WITNESS: Yes, it's possible.

BY MR. SACHSE:

[147] Q Okay. But you know when you looked back, Lieutenant Madigan punched him?

A Yes.

Q All right. And then tell me – I don't mean to go over it over and over, and I promise this will be towards the end. But what happened after you saw that punch? What did you do?

A After Lieutenant Madigan had threw the first punch, my thought was – my goal still was to get the Inmate Blake to 7 B, which was lockup. And once we started – you know, he was – he was really irate then and, you know, struggling and mad, but all his aggression to me was going towards Lieutenant Madigan.

Q Right.

A And as we were struggling, I remember looking up the hall towards the officer, which was Officer Woodard at the time, and at that time I heard Inmate Blake say that, "Ross, he hit me again."

And that's when I turned toward Blake, and we had – we was like – there's a wall right out [148] there, and we was, like, close to the wall. And I just wanted to focus – since – and he wasn't showing no aggression towards me, I was making eye contact with Mr. Blake to tell him, come on, we going, you know, go to 7 B.

Q Okay. And he – Inmate Blake never, from the time you got him out of his cell, down the steps, into the hallway, showed any aggression toward you, did he?

A No.

Q All of his anger seemed to be directed towards Lieutenant Madigan?

A Yes.

Q And he seemed to be very upset any time that Lieutenant Madigan would touch him. Is that – is that a fair statement?

A Correct.

Q And he told Lieutenant Madigan not to touch him. And I realize he used profanity, but he told him not to touch him on several occasions?

A Yes.

Q Let me just see real quick. I know we've [149] had you sitting there for almost four hours, so I'm going to –

A I'm okay.

Q Yeah, but I'm not.

When you went down on the ground, you said you had told Inmate Blake I'm going to take you to the ground, and he agreed to go to the ground with you; correct?

A Correct. He said okay.

Q He said okay. And then you started going down, but he did not come down with you; is that right?

A No, he came down with me, but we – we had end up falling to the ground rather – both of us, like, just –

Q I was trying to figure out how that happened. I didn't know whether you had indicated that he then refused to go to the ground or whether the two of you just fell or what happened. You tell me.

A I think once I told Mr. Blake that we were going to the ground, he said okay.

* * *

BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAIDON BLAKE, a/k/a SHAMVOY SMITH, Plaintiff,	:	Civil Action Number AW-09-367
vs.	:	
GARY MAYNARD, et al., Defendants.	:	

VIDEO DEPOSITION OF JAMES MADIGAN

Washington, D.C.

Monday, August 29, 2011

* * *

[33] Q Do you recall approximately when that was, that Sergeant Bryant took your cuffs?

A I'm trying to remember. I think it was a little after 2000 – latter part of 2004 maybe.

Q From that point on, you didn't carry handcuffs with you?

A No.

Q And you didn't have any handcuffs on June 21, 2007?

A No, sir.

Q What happened next?

A He said don't touch me as we were going down the steps. It's our job to escort an inmate down steps, arms locked in, and he said don't touch me, and Sergeant Ross had the inmate locked in, but I followed him very closely behind. We were going down the steps, which is, considering the size of the three people involved, very, very cramped, so that's why I would be behind instead of to the side.

Q Why did Mr. Blake say don't touch me to [34] you?

A I have no idea, sir.

Q Were you touching him?

A I was trying to in order to escort him.

Q When did you first try to touch Mr. Blake?

A As we were trying to go down the steps.

Q When there are two officers escorting an inmate, do both officers have to have contact with the inmate?

A If I recall, yes, because that's the way I was taught to escort an inmate.

Q Do you recall when you were taught that?

A I'm trying to remember exactly. I'm trying to remember. I think it was like 1998, 1997, around that time.

Q And who taught you that procedure?

A If I remember, I think at that time was Major Wolf.

Q Are you aware of any written policy or procedure that states that two officers escorting an inmate, both must have contact with the inmate?

A I don't recall reading that exactly, no, [35] sir.

Q Before you tried to touch Mr. Blake, did he appear to be complying with Mr. Ross's escort?

A Yes.

Q You mentioned that the stairs were cramped?

A Yes.

Q Can you describe how you, Mr. Blake and Mr. Ross were positioned going down the steps.

A Going down, facing down in my direction, for example, I was to the left, to the rear. Blake was to my right and Sergeant Ross was to his right and slightly behind.

Q Was Sergeant Ross holding Mr. Blake's arm?

A If I remember, he was.

Q Which of Blake's arms was Mr. Ross holding?

A The right arm.

Q And you were slightly behind?

A I was.

Q What else happened on the steps?

A He continued to yell don't touch me. We [36] continued to walk down the steps.

Q Did you say anything in response to Mr. Blake saying don't touch me?

A I don't recall exactly what I said. All I know is that it was my duty to escort him, and he cannot tell – it's very basic protocol that inmates do not tell correctional staff with whom they're going to comply and with whom they're not going to comply.

Q Did Mr. Ross say anything to either you or Mr. Blake?

A He says Madigan, I got this. He says I got this.

Q Did you say anything in response to Mr. Ross?

A No, I didn't. I was continuing to try to – what I saw was a proper escort.

Q If Mr. Ross told you I got this, why did you continue to try to touch Mr. Blake?

A Because I'm in a supervisory role. I have to comply with rules. In fact, he would had to have complied with any orders if it came to that.

* * *

[41] Q Where was Mr. Ross at this point?

A Mr. Ross was off to the inmate's left. He was behind him.

Q Was Mr. Ross in contact with Mr. Blake at this point?

A I don't recall exactly. It looked likely that he would have been.

Q What happened then?

A The inmate lurched towards me as if he looked like he was getting ready to give me a headbutt, and I wound up hitting him with my fist four times. I had forgotten even that I had the keys in my hand.

Q You had the keys in your hand?

[42] A Yes, sir.

Q How many times did you hit Mr. Blake?

A Approximately four times.

Q Could it have been more than four?

A I don't recall if it had been any more than four times. Any degree of certainty, I would say four times.

Q But it could have been more than four?

A I don't recall it being any more. I think it was very unlikely.

Q What part of your body struck Mr. Blake?

A My fist.

Q Where on Mr. Blake did you make contact?

A His face.

Q Do you recall whether it was his left side of his face or right side of his face?

A I don't recall. The only thing I recall is I hit his face. I wanted him not to headbutt me.

Q What makes you think he was going to headbutt you?

A Because his face was coming to me and looked like a rather quick speed.

* * *

[46] Q What happened after that?

A The only thing I recall is that Sergeant Ross had the inmate against the wall, and he stopped, and I asked lieutenant – I asked Officer Woodard for cap spray.

Q What's that?

A It's Cap-Stun, basically nonlegal force. What happens is it stops an inmate from becoming violent. It's intended to slow the inmate down and to stop resistance.

Q Why did you ask Ms. Woodard for cap spray?

A Because I felt like he was not moving anywhere, offering resistance and instead of thinking to call for further assistance, I called for that, and she told me no.

Q Did she say anything else?

A No, not that I recall.

[47] Q What was Mr. Ross doing at this point?

A He was standing beside the inmate.

Q Did he say anything to you at this point?

A I don't recall him saying anything.

Q Did Mr. Ross say anything to Ms. Woodard?

A I don't recall him saying anything.

Q When you say that the inmate was resisting at the point at which you asked Ms. Woodard for the cap spray, was he resisting Mr. Ross as well as you?

A Yes.

Q What happened next?

A I told him if you go with Sergeant Ross – would you go with him. I don't recall Blake's statement on that one. All I recall is that he said to Ross, he says take me now, and Ross ran towards the inmate and tried to escort him, and he was resisting him, and Woodard called a signal 13. At that time I was close to 7 B, and I ran in towards the inmate and

I knocked him down where I stayed on top of him until help arrived.

Q So you asked Mr. Blake if he would go with Mr. Ross?

[48] A At the end of all this.

Q But you don't recall if Mr. Blake said anything in response?

A Response to me?

Q Yes.

A Not directly to me.

Q Did he say anything in response to anyone else?

A To Ross.

Q What did he say?

A He said take me now.

Q Take me now?

A Yeah. He said that, if I remember, in a sarcastic voice.

Q Mr. Ross ran toward Mr. Blake?

A He took him, and he was – he tried to shake Ross off.

Q How far away from Mr. Blake was Mr. Ross when Mr. Ross had to approach Mr. Blake?

A Approximately 3 feet.

Q How far away from Mr. Blake were you at this point?

[49] A I was about 10, maybe 15 feet.

Q So no one was holding on to Mr. Blake at this point?

A Not that I recall.

Q How did Mr. Blake get away from both of you?

A We were at a standstill at the time. Nobody was moving anywhere.

Q How did Mr. Blake get 10 to 15 feet away from you?

A Because I originally approached Officer Woodard for the cap spray to try to bring the inmate under control.

Q How did Mr. Blake get 3 feet away from Mr. Ross?

A I don't recall if it was quite that far. It looked like they were standing pretty close.

Q You said a few minutes ago he was about 3 feet away?

A I'm trying to recall exactly. I would say that would be fair. 3 feet would be fair.

Q But you don't know how Mr. Ross lost [50] contact with Mr. Blake?

A We walked away a little bit because we were at a standstill.

Q So then you ran towards Mr. Blake?

A No. It was when Sergeant Ross went towards the inmate. It was after then that I ran towards the inmate because he was offering Sergeant Ross resistance.

Q So then after he offered Sergeant Ross resistance, that's when you began towards Mr. Blake?

A Yes.

Q What happened after you ran towards him?

A I fell on top of him. Once he was on the ground and I was on the ground, that was it. I just – my body weight was enough to keep him until help arrived.

Q When you fell on top of him, was Mr. Blake facedown, or was he on his back?

A He was on his back.

Q So you were on top of his chest?

A Not his chest, no, more like his abdomen, his general body area.

[51] Q Were you in contact with any other parts of his body?

A That was it. Of course, if I'm lying down on top of him, that would be from his feet, around his upper abdomen, not directly on the chest.

Q Where were your arms at this point?

A My forearms, if I remember, I think they were on the floor. My left arm was here. It was on the middle of his torso, and the other one was on the floor, if I remember.

Q Where is Mr. Ross at this point?

A I don't recall. If I remember, he was still in the hallway. All's I remember with any certainty, I think generally he was still in the hall. All's I remember with certainty is I stayed on top of the inmate until help arrived.

Q Did someone call for help?

A Officer Woodard sent a corridor officer.

Q Did she call for help on her own, or did someone tell her to call?

A I don't recall.

* * *

[United States District Court, Filed 9/6/11]

Rice, Sarah

From: Rice, Sarah
Sent: Tuesday, August 02, 2011 1:55 PM
To: 'Eisenberg, Emily R.'; dsachse@dtslawoffices.com
Subject: RE: Blake v. Maynard, AW-2367

I would not object if time remained for discovery on any new matters raised for the first time in your amended complaint or if you were amenable to extending discovery as to any new matters first raised in the amended complaint.

From: Eisenberg, Emily R. [mailto:EEisenberg@mayerbrown.com]
Sent: Tuesday, August 02, 2011 1:53 PM
To: Rice, Sarah; dsachse@dtslawoffices.com
Subject: RE: Blake v. Maynard, AW-2367

You have our consent to file an amended answer, provided you do not object to our filing an amended complaint at a later date. Thank you.

Emily R. Eisenberg
T: (202) 263-3828

From: Rice, Sarah [mailto:srice@oag.state.md.us]
Sent: Tuesday, August 02, 2011 1:29 PM
To: Eisenberg, Emily R.; dsachse@dtslawoffices.com
Subject: Blake v. Maynard, AW-2367

Emily and Doug,

I am writing in accordance with Local Rule 103(6)(d) to inquire as to whether you would consent to defendant Ross filing an amended answer.

Best,

Sarah W. Rice
Assistant Attorney General
Office of the Attorney General
200 St. Paul Place
Baltimore MD 21202
ph: (410) 576-7005
fax: (410) 576-6955

[Disclaimer Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAIDON BLAKE aka SHAMVOY SMITH, #343938, Plaintiff, v. GARY MAYNARD, *et al.*, Defendants.	Civil Action No. AW-09-2367

PLAINTIFF'S CONSENT MOTION FOR LEAVE TO AMEND COMPLAINT

(Filed Sep. 22, 2011)

Plaintiff Shaidon Blake, by his undersigned counsel, hereby moves pursuant to Federal Rule of Civil Procedure 15(a)(2) for leave to amend his complaint. In support of his motion, Plaintiff states as follows:

1. On September 8, 2009, Plaintiff filed a complaint, *pro se*, under the Civil Rights Act, 42 U.S.C. § 1983, using a court-supplied form for use by prisoners. Doc. No. 1.

2. On November 19, 2009, Defendant Michael Ross, among other since-dismissed defendants, filed an answer to the complaint. Doc. No. 6. On February 4, 2010, Plaintiff filed a motion for summary judgment, and Defendant Ross, among others, filed a motion to dismiss or, in the alternative, for summary

judgment. Doc. Nos. 17, 18. On September 9, 2010, this Court denied Plaintiff's motion without prejudice, granted summary judgment in favor of two individual defendants, and denied summary judgment in favor of Defendant Ross. Doc. No. 32.

3. On March 14, 2011, Defendant James Madigan filed an answer to the complaint. Doc. No. 53.

4. The Federal Rules allow a party to amend its complaint "with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). "The court should freely give leave when justice so requires." *Id.*; *see also Forman v. Davis*, 371 U.S. 178, 182 (1962).

5. Plaintiff's complaint was drafted longhand on a standard form, without the assistance of counsel, His proposed amended complaint, attached hereto, is re-formatted to comply with the Local Rules and corrects minor spelling and grammatical errors. Plaintiff's proposed amended complaint also updates his claims to clarify that he is seeking an award of punitive damages in addition to any compensatory damages.

6. In accordance with Local Rule 103(6)(d), undersigned counsel has obtained the written consent of counsel for Defendants Ross and Madigan to file this motion for leave to amend the complaint. Because of the unique format of the original complaint, Plaintiff respectfully requests that this Court grant him relief from the requirement of Local Rule

103(6)(c) that a redline version of the original complaint be filed.

7. More than a month remains in the discovery period agreed to by the parties (*see* Fifth Amended Joint 26(f) Report (Doc. No. 76) (setting deadline for all discovery as October 28, 2011)), and no trial date has been set. Therefore, there is no prejudice to the other parties and this Court as a result of this proposed amendment.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order granting Plaintiff leave to file his amended complaint.

Respectfully Submitted,

DATED:
September 22, 2011

MAYER BROWN LLP
Reginald R. Goeke (13527)
Scott A. Claffee (96077)
Emily R. Eisenberg (95441)
1999 K Street N.W.
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Attorneys for Plaintiff

By: /s/
Emily R. Eisenberg

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAIDON BLAKE aka SHAMVOY SMITH, #343938, Plaintiff, v. GARY MAYNARD, *et al.*, Defendants.	Civil Action No. AW-09-2367

PLAINTIFF'S AMENDED COMPLAINT

Plaintiff Shaidon Blake, by his undersigned counsel, for his complaint under the Civil Rights Act, 42 U.S.C. § 1983, against Defendants Michael Ross and James Madigan, hereby alleges and states the following:

STATEMENT OF CLAIM

1. On June 21, 2007 at 6:50 pm while I was being escorted from Unit 7C at the MRDCC (Diagnostic & Classification Center) by Sgt. Michael Ross, I was approached by Lt. James Madigan who, once I was handcuffed behind my back, proceeded to push me. I was headed down a flight of stairs at the time. His actions were unprovoked, so I stated he did not have to push me.

2. Once outside of the unit, Lt. Madigan returned inside to speak with Tier Officer Cpl. Candice

Fields and I was ordered to stand with my right shoulder against the wall until Lt. Madigan returned. I was being watched by Sgt. Ross and I complied with the order.

3. After Lt. Madigan exited the unit, he approached me and, without warning or being provoked in any way by me, started to punch me in the face. Lt. Madigan had a circle key ring gripped in his hands as he pounded me in the left side of my face from overhead approximately 7 times. His force drove my head into the wall several times. After his unprovoked attack, he then proceeded to try and throw me to the ground yelling for me to take a knee. Lt. Madigan acted with callous and reckless disregard for my rights.

4. Over an extended period of time, Sgt. Ross made no attempts to stop the attack despite my repeated pleas for assistance, but the officer assigned to the Hall called for officers' assistance. Sgt. Ross and Lt. Madigan took me to the ground in a violent manner. Sgt. Ross acted with callous and reckless disregard for my rights.

5. Capt. Vincent was one of the first to respond and separated Lt. Madigan and Sgt. Ross from me, and then I was escorted to medical by Captain Vincent.

6. I am in state custody and it was an unprovoked attack. I now live with the results. Therefore, I am now seeking to hold Sgt. Michael Ross and James Madigan responsible for my injuries.

7. Sgt. Ross was responsible for protecting me from attack and injury because he was my escort and I was handcuffed behind my back, so I was rendered defenseless.

8. I am psychologically and physically damaged, and therefore I am under permanent doctors' care and taking medication.

PRAYER FOR RELIEF

9. I, Shaidon Blake, am seeking compensation for pain & suffering, along with extensive medical treatment, and any other relief this court deems proper.

10. I am seeking an Order awarding an appropriate measure of compensatory damages to be determined at trial.

11. I also am seeking an Order awarding punitive damages for Defendants' wrongful conduct, in an amount to be determined at trial.

12. I now suffer from Posttraumatic Stress Disorder and constantly relive my attack, which interferes with my ability to interact with officers. I find it hard to trust any officers and do not like being handcuffed for fear of attack.

13. I am on administrative segregation because my anxiety attacks will not allow me to function properly in general population.

14. I am under the psychiatrist's care and have to take medication twice daily for my condition.

15. This attack has worsened an injury to my head and face that I previously had. I suffer from permanent nerve damage on the left side of my face and severe migraines, for which I take 600 milligrams of Neurontin for the pain.

16. A psychiatrist has prescribed 50 mg Diphenhydramine Hcl twice a day, 5 mg Perphenazine twice a day and 60 mg of Prozac once a day. These medications are to treat anxiety attacks, depression, and Posttraumatic Stress Disorder.

JURY TRIAL DEMAND

17 Plaintiff demands a trial by jury for those claims so triable.

Respectfully Submitted,

DATED:
September 22, 2011

MAYER BROWN LLP
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Attorneys for Plaintiff

By: /s/
Emily R. Eisenberg

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)

SHAIDON BLAKE a/k/a
SHAMVOY SMITH #343938

Plaintiff,

vs.

GARY MAYNARD, et al.

Defendants.
/

Civil Action No.
8:2009cv02367

The deposition of SHAIDON BLAKE was held on Tuesday, September 27, 2011, commencing at 10:20 A.M., at the Offices of Maryland Reception Diagnostic and Classification Center, 550 East Madison Street, Baltimore, Maryland 21202, before Louis C. Peppler, Notary Public.

* * *

[12] Q Did you attend an inmate orientation?

[13] A Inmate orientation, can you describe that, because we might call it something else?

Q Were you shown an orientation video?

A No.

Q Were you given any information about services that are available to inmates?

A PSA. That's what this is for PSA, yeah.

Q What does PSA stand for?

A Professional Service Area.

Q Was that a formal introduction to the PSA?

MR. CLAFFEE: Objection. Vague.

Q Well, how were you told about the PSA?

A This is a classification. That's it, to that extent only.

Q Did you receive any written material?

A Inmate handbook.

Q Were you transferred to MDCI?

A Yes.

Q What happened when you arrived at MDCI?

MR. CLAFFEE: Objection. Vague.

Q Were you given a medical exam at MDCI?

[14] A Upon request.

Q Were you given a mental health examination at MDCI?

A Yes.

Q Were you prescribed any medication when you arrived at MDCI?

A Yes.

Q What medication were you prescribed?

A Celexa, something like that.

Q Was that the only medication?

A Neurontin.

Q Why were you prescribed Celexa?

A Celexa was for – I really don't know. I don't know.

Q Why were prescribed Neuronin?

A Head problems.

Q When you arrived at MDCI, did you attend any orientation?

A No.

Q Was there any time when you were informed of the facilities available to MDCI, or the rules about [15] inmate conduct?

MR. CLAFFEE: Objection. Compound.

Q Did you attend a presentation about the rules of inmate conduct when you first arrived?

A No.

Q Were you given a copy of the inmate handbook?

A Yes.

* * *

[22] Q Who is James Madigan?

A He was the lieutenant that was involved in this incident with me.

Q When did you first met Mr. Madigan?

A June 21st. This day, June 21st.

Q You had never met Mr. Madigan before the incident?

A I never seen him.

Q Did you see him after the incident?

A No.

Q Let's talk about June 21st, 2007 Were you involved in a disagreement with another inmate on housing unit 7 that day?

A No.

Q Were you given a notice of infraction?

[23] A Yes.

Q What was the notice of infraction about?

A Ms. Fields wrote a ticket saying that I was disturbing her unit.

Q Why did she do that?

A I have no idea. She's got no purpose. There was no reason.

Q What did she say the disturbance was?

A The telephone and the T.V.

Q What did she say about the telephone?

A She said I was using the phone and it wasn't my phone time.

Q Did you have any interaction with the phone that day? Did you try to use the phone that day?

A Yes.

Q What happened?

A She came and tapped me on my shoulder and told me to get off the phone.

Q Was it your allotted phone time?

A It was my recreation time, yes.

Q Is there a list that's kept on the unit?

[24] A Sure, yes.

Q For who can use the phone?

A Yes.

Q Were you next on the list?

A Yes. I was on the list, but my name had got passed by. It had passed.

Q Then what happened? What happened when you went to use the phone? How did you get the phone if your name had already been passed by?

A It was a friend of my mine's phone time.

He gave me his phone time, so I used it then.

Q What did Ms. Fields say about the television?

A She said I was commandeering the television. She told the lieutenant that I was commandeering the television or something.

Q Were you commandeering the television?

A No.

Q You said Ms. Fields tapped you on the shoulder when you were trying to use the telephone; is that right?

[25] A Yes.

Q Then what happened?

A I kept using the telephone. She walked away.

Q What happened after you got off the phone?

A I didn't. It was Sergeant Ross at the time and Sergeant Tawn Davis came in and asked me to lock-in.

Q Did you lock-in?

A Yes.

Q What cell were you in?

A I don't recall.

Q What happened after you locked-in?

A Shortly after, Lieutenant Madigan and Sergeant Ross came to my cell.

Q What happened when they came to your cell?

A They came to my cell and told me to pack up. I was going to lockup.

Q Who told you?

A Lieutenant Madigan.

Q Then what happened?

[26] A Well, after he told me I was going to lockup, I had a question. I said why? I didn't understand why.

Q Did anyone tell you why?

A Yes, Madigan did.

Q What did he say?

A He said because you're a bad ass and you're commandeering the T.V., taking over the unit.

Q Then what happened after that?

A I said I don't know what you're talking about. I referred him to a dude that was sifting in front of the T.V., plus the dudes that were there to question.

Q You thought that this other inmate was commandeering the T.V.?

A No. I was referring the lieutenant to the people who were watching the T.V., so he could question them and ask them what was happening. I don't watch T.V.

Q Was your cell door open?

A Yes.

[27] Q What happened after you asked Lieutenant Madigan to talk to the other inmates?

A He didn't want to hear it. He got the cuffs from Ross and told me to cuff-up, pack my stuff up and cuff-up.

Q Then what happened?

A I packed my things and I cuffed-up.

Q Who placed the handcuffs on you?

A I don't remember exactly who did it.

Q Were you handcuffed in the front or in the back?

A Behind me.

Q Were you still inside your cell when the handcuffs were put on?

A Yes, because I had a big old bag in my hands with my property. I had a big trash bag full of property.

Q What happened after you were handcuffed?

A Well, I was carrying this big bag behind my back. Sergeant Ross was on my right, or had one of my sides and I had to go down the stairs.

[28] Q You said Sergeant Ross was on one of your sides. Did you mean that he was touching you?

A Yes.

Q How was he touching you?

A In the escort holding my arm (indicating).

Q You're touching your upper arm; is that right?

A Yes.

Q Just so that I am clear. You said you don't remember which side Ross was on?

A No, I don't remember.

Q Then you said you came outside of your cell; is that right?

A I stepped out and then he grabbed my arm.

Q Then what happened?

A As I'm carrying this big bag behind my back going down the stairs, Lieutenant Madigan shoved me from behind.

Q How were you and Lieutenant Ross positioned on the stairs?

A We were side by side.

[29] Q Mr. Madigan was behind you?

A Behind me.

Q Did you say anything?

A After he pushed me, I did.

Q What did you say?

A I said don't fucking push me. Excuse me.

Q That's okay. Did Mr. Ross say anything?

A Yes, he did.

Q What did he say?

A He said, Lieutenant, I got him. He's all right.

Q What happened after that?

A I made it down the stairs. A short distance to the corridor door, we walked outside the door.

Q How was Mr. Madigan positioned with respect to you and Mr. Ross?

A He trailed behind us, shortly behind us, I mean the whole time until we got outside.

Q Until you got outside?

A Yes.

[30] Q So, you and Mr. Ross were – because he had his hand on you this whole time; is that right?

A Excuse me.

Q Lieutenant Ross, did he still have his hand in the escort grip while you were walking?

A Yes.

Q Until you got outside?

A Yes.

Q And Madigan was trailing slightly behind you?

A Yes.

Q What happened after you got outside?

A He told me to put my shoulder on the wall and stand there and wait. He went to the pod door and talked to Candice Fields, Lieutenant Madigan did.

Q So, who told you to stand by the wall?

A Lieutenant Madigan.

Q Where was Sergeant Ross?

A Holding my arm.

Q Was he between you and the wall?

A No.

[31] Q So, he was holding your arm, and then you were standing, and then there was the wall; is that right?

A He was side by side to me, inches, and then the wall. I'm on the wall, flat against the wall, and he was inches away from me.

Q So, was he holding you still?

A Yes.

Q Which way were you facing?

A I was facing the pod door that I just exited.

Q So, you were facing back towards 7C?

A 7C.

Q Could you see into the pod?

A Yes, the door was open.

Q Did you hear Mr. Madigan and Ms. Fields conversation?

A No.

Q Did anyone say anything else while you were standing there?

A I don't understand what you mean.

[32] Q Did anyone say anything during this time when you were standing by the wall?

A Not to me.

Q Did you say anything?

A No.

Q What happened after that?

A Lieutenant Madigan came out of 7C corridor and came in my face. He had the keyring on his hand and he started pointing in my face yelling and cursing at me. Then that's when he punched me in my face like three or four punches, then he stopped for a second and then started back up again.

Q What did Mr. Madigan say?

A He said this is not fucking California.

Excuse me. This gang shit is not going to work here, then he started punching me in my face.

Q You were standing at the time?

A Yes.

Q Did Mr. Madigan touch you at all other than the push before he punched you?

A No.

[33] Q Where was Sergeant Ross?

A He was basically to my side. He was holding my side just standing next to me.

Q You were stationary at the time?

A With my shoulder on the wall.

Q What happened after that?

A I was given a directive to take a knee.

Q Did you?

A No.

Q What did you do?

A I stood with my shoulder on the wall.

Q What happened after that?

A Lieutenant Madigan ordered the corridor worker, Ms. Woodard to Mace me.

Q What happened then?

A After the order?

Q After the order.

A She refused.

Q Did anyone else say anything?

A I don't remember.

Q Do you remember what happened next?

[34] A Okay. Lieutenant Madigan and Lieutenant Ross grabbed me and threw me to the ground.

Q Were you still standing against the wall?

A Yes.

Q Did Sergeant Ross still have you in an escort grip?

A I don't understand. Can you tell me again?

Q Okay. Did Sergeant Ross have you in an escort grip this whole time?

A The whole time I was hit in the face?

Q Yes.

A Yes.

Q Did he still have you in an escort grip after Lieutenant Madigan ordered Ms. Woodard to Mace you?

A Yes, he still had ahold of me.

Q Did he always have you in an escort grip?

A Yes.

Q How did Mr. Madigan grab you?

A He kind of pulled me forward, and then grabbed me by the side of my pants, and Ross grabbed [35] the other side.

Q How did Ross grab the side of your pants?

With what hand?

A I don't know what hand.

Q Was it with one hand?

A I don't remember.

Q Was he still holding your arm?

A I don't remember.

Q So, they grabbed the side of your pants and then what happened?

A Dumped me to the ground.

Q How did they do that?

A My feet came from under me and I hit my head. He dumped me on my head.

Q So, you fell forward?

A No, I fell backwards.

Q You fell backwards?

A Yes.

Q So, up until this point, you were standing with your arm against the wall?

A Yes.

[36] Q Did you ever move off of the wall?

A No.

Q What happened after that?

A At what point are we at now?

Q What happened after you were dumped on your back?

A Ms. Woodard called for someone to come help. He dropped his knee on me. Ross dropped his knee in my chest. There was just a bunch of, I don't know, just mayhem, so I don't really recall, because everybody came running off the elevator.

Q When did Ms. Woodard call for the other officers?

A Shortly after she refused a direct order and I was dumped on my head.

Q Did anybody else say anything before she called for the officers?

A No.

Q What happened after the officers arrived?

A Well, Captain Vincent grabbed them off of me, because Ross and Madigan were on me. Both of them [37] had me.

Q Both of them were on top of you?

A Yeah, both of them had me at this time when they came.

Q You said before that Ross had his knee on your chest.

A Yes, he dropped his knee on my chest.

Q How was Madigan on top of you? When did he get on top of you?

A In a restraint. In a spring type motion, manner, I guess, he dropped his knee in my chest, Ross did, and I guess he's like standing on the side of me or whatever.

Q So, Ross has his knee on top of your chest and then Madigan is holding your shoulders down?

A Like restrained, being restrained.

Q But, they're both standing over you?

A Yes.

Q How far down the corridor were you?

A Approximately, ten feet from the 7C door.

Q Where would that be in relation to the [38] elevators?

A Approximately, 20 feet from the elevators, 20 or 30.

Q So, you were in between the elevators and the 7C door?

A Yes.

Q So, what happened after Captain Vincent arrived and Sergeant Ross and Lieutenant Madigan were no longer on top of you?

A I was escorted to an elevator down to the next unit.

Q What happened there?

A First, I was put in a holding tank.

Lieutenant Joyner was talking to me. Then from there, I was taken to medical to be seen.

Q What did Lieutenant Joyner talk to you about?

A He just asked me was I all right.

Q Were you all right?

A No.

Q What was wrong?

[39] A I had just gotten beaten up. I was upset. I was hurt. I was feeling bad.

Q What hurt?

A My head hurt. My face hurt. My face was swollen up.

Q What happened after you went to the medical unit from the holding cell?

A After I went to the medical unit?

Q At the medical unit. So, you were in the holding cell speaking to Lieutenant Joyner; is that right?

A Yes.

Q Then you went to the medical unit?

A Yes.

Q What happened there?

A Well, they were doing a preliminary examination on my face and things to see was I hurt. They gave me Tylenol. It was full of police officers in there. I asked them to take me to my cell, take me upstairs.

Q Did you sign a release form?

[40] A Yes, I did.

Q Why did you sign the release form?

A Because I didn't want to be down there.

There were 20 police officers approximately packed in this little room. I mean, six by nine. I just had to get out of there.

Q Who were the officers?

A It was so many I don't recall.

Q Do you remember any of them?

A One of them was Lieutenant Joyner.

Q Is that the only one you specifically remember?

A Yes.

Q Why were the officers there?

A It was a code. It was a response code.

They were all just there, I can assume after that.

Q Did they follow you to medical?

A When I came out of that holding cell, I seen a hallway full of police officers. Every police officer available was there.

Q Were they the same officers that were at [41] the scene?

A No, I don't recall that.

Q Were you still in pain when you returned to your cell?

A Yes.

Q Did you ask to be seen by medical after you returned to your cell?

A I don't recall.

Q Do you remember the next time that you were seen by medical?

A The sick call nurse that comes through with the medication cart.

Q What medication did you receive? Do you remember?

A First, it was just Motrin.

Q Did you tell the sick call nurse that you were still in pain?

A Yes.

Q Did you write a sick call slip?

A I don't recall.

Q Did you see anyone other than the sick call [42] nurse?

A Captain Vincent.

Q Why did you see Captain Vincent?

A He was the guy that responded first and came in asking me questions.

Q Did he ask you questions about the incident?

A Yes.

Q Did you write a statement?

A Not with Captain Vincent, I didn't.

Q Did you write a statement at any time?

A Yes.

Q When did you write the statement?

A That was about 20 or 30 minutes after I was put in my cell for segregation.

Q Had you spoken to anybody before you wrote the statement?

A Briefly with Lieutenant Joyner down in the holding cell.

Q Would you say that the statement that you wrote then was accurate?

[43] A It was accurate, yes.

Q When did Captain Vincent come to talk to you?

A Captain Vincent came up at about maybe 15, 20, 30 minutes afterwards.

Q Do you remember what he asked you about?

A He asked me about the incident that occurred.

Q Did anyone come to talk to you about the incident after Captain Vincent?

A Captain Cruz.

Q Who is Captain Cruz?

A That's who assigned me to administrative segregation. He came in to bring the paperwork for it.

Q Were you told why you were assigned to administrative segregation?

A Yes.

Q Why?

A Pending an investigation in the assault.

Q Did anybody else come to talk to you?

A Yes.

[44] Q Who else?

A Intel.

Q Did you speak with the investigator?

A Briefly.

Q Do you remember what you spoke about?

A The incident.

Q What did you tell them about the incident?

A The same thing I wrote in the report.

Q At that time, did you ask that the investigation be closed?

A No.

Q Did you ever ask that the investigation be closed?

A I didn't ask anything.

Q Did you sign a statement asking that the investigation be closed?

A I didn't sign anything asking for the investigation to be closed.

MS. RICE: Mark that.

(Mr. Blake Deposition Exhibit 1 was marked for purposes of identification.)

[45] Q Do you recognize this document?

A It's got my signature on it.

Q Do you remember signing it?

A Vaguely, yes.

Q Do you remember why you signed the document?

A Because I was told that there was an investigation going on, that it was being handled, so I said okay.

Q Did you read the document before you signed it?

A I was in handcuffs. This wasn't in MRDCC. This was months later and I was in handcuffs.

Q So, when you said that Intel came to visit you, was that at MRDCC?

A Yes.

Q When did Intel come to visit you?

A Maybe three days to a week after the incident.

Q Where were you when you signed this document?

[46] A Cumberland, Maryland, North Branch Correctional Institute.

Q Had an investigator come to visit you again?

A No.

Q Who asked you to sign the document?

A A dude from outside the investigation talked to me or something and it was over the phone.

Q Do you know whose signature this is on the witness line?

A Lieutenant Thomas, North Branch Correctional Institute.

Q Are there two different signatures here?

A The top guy was who I spoke to over the phone. This is a fax.

Q You spoke to him over the phone. What did he say to you?

A He said it's being investigated. He couldn't inform me what's going on, but it's being investigated.

Q What did he tell you the purpose of this [47] form was?

A He just said he needed the form.

Lieutenant Thomas asked me to sign the form.

Q Did you read the form?

A I guess I did. I don't recall.

Q Have you read the form now?

A Yes, I have.

Q What does the form say?

A It says "I, Shaidon Blake, 343938 have been involved in an incident that was reported to the Department of Public Safety and Correctional Services Internal Investigative Unit. I am now requesting that no investigation be conducted. By signing this statement, I am requesting that no further investigative action be taken on this complaint and that the matter be considered CLOSED. This statement is being signed freely and voluntarily with no threat or coercion being used against me to sign this statement."

Q So, you said your understanding was that the investigation would continue after you signed this [48] form?

A Yes.

Q Do you know what the outcome of the investigation was?

A The guy said internal investigation. He can't inform me.

Q Was there a request for administrative remedy?

A Was there a request for? I don't understand what you mean.

Q Do you know what a request for administrative remedy is?

A I don't want to assume we're talking about the same thing.

Q Within the Department of Correction, what does that term mean?

A Are you speaking about grievances?

Q Well, an ARP. What is an ARP?

A ARP, you send that to the warden or whatever and the warden will take care of something for you.

[49] Q Did you file an ARP about this incident?

A No, the warden did. The warden instantly jumped in and involved himself.

Q But, you didn't file an ARP about this incident?

A No. It was dealt with internally. The ARP is if you want to get their attention, to get them to react to your situation.

Q Have you ever filed an ARP?

A No.

Q Did you file any grievance about this incident?

A It's the same thing.

Q With the Inmate Grievance Office?

A No.

Q Why not?

A Because it was handled. The warden instantly got an investigation going. That's what it's for.

Q Have you ever read the Division of Correction directives about the administrative remedy [50] procedure?

A No.

Q What about the Inmate Grievance Office, directives about the inmate grievance procedure?

A No.

* * *

[90] Q Where was Ross during the punching?

A Right next to me, inches.

Q Could Ross see the punches?

A Yes.

Q Who asked you to take a knee after the punches?

A I think it was Madigan.

Q Why didn't you take a knee?

A Because I was being beat up.

Q How many officers responded out of the elevator?

A There may have six or seven.

Q How many officers were in the medical unit after the incident?

A Over 20.

Q So, were there different officers in the [91] medical unit than outside of the elevators?

A Yes.

Q Why do you think there were so many officers in the medical unit?

MR. SACHSE: Objection.

THE WITNESS: There was a code being called and an officer was involved.

Q I believe you testified that before this incident, you weren't on Neurontin. But, you were placed back on it after this incident; is that right?

A I think so.

Q When you went on Neurontin after this incident, your dosage was higher than any previous time you were on Neurontin?

A Yes.

Q When you signed this Exhibit 1, did you know that Madigan had been terminated?

A Just rumor.

Q No one formally told you about Madigan's termination; is that right?

A No. Actually, they said they couldn't tell [92] me anything about the investigation.

Q But, you heard from somewhere else that he had been fired?

A Yes.

Q You testified that on the stairs, Ross said to Madigan I got him; is that right?

A He said I got him. He's okay.

Q Did Ross say anything else to Madigan at any other time throughout this incident?

A No.

Q Did Ross do anything to stop Madigan from punching you?

A No, he didn't.

Q Did he say anything to Madigan after he punched you?

A No.

Q What could Ross have done after Madigan punched you?

MS. RICE: Objection.

Q You can answer, if you remember my question.

[93] A No, I don't.

Q What could Ross have done differently after Madigan punched you? I'm sorry, not differently. What could Ross have done after Madigan punched you?

A He could have got between us and stopped it.

Q Is there anything else he could have done?

A He could have called for a code for assistance.

Q Do you know if any disciplinary action was taken against Ross as a result of this incident?

A I don't know. He told me he couldn't tell me nothing.

Q So, you couldn't have known if any action had been taken?

A No.

MR. CLAFFEE: I think that's all the questions I have. I would like to say for the record that we want to assert our right and correct the transcript.

(Deposition concluded at 12:05 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAIDON BLAKE aka SHAMVOY SMITH, #343938	*	
Plaintiff,	*	Civil No. AW-09-2367
v.	*	
GARY MAYNARD, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * * * * * * * * *

ANSWER TO AMENDED COMPLAINT

Defendant Michael Ross, through counsel, answers the plaintiff's amended complaint as follows:

1. Defendant admits that on June 21, 2007, at the Maryland Reception, Diagnostic and Classification Center, he was involved in escorting inmate Shaidon Blake, #343-938, from Unit 7C to Unit 7B, and that during this escort they descended the stairs. Defendant has insufficient information to admit or deny the remaining allegations as to Lieutenant Madigan, and therefore denies them.

2. Defendant denies this allegation.

3. Defendant admits that he witnessed Lieutenant Madigan punch the plaintiff in the face more than one time. Defendant has insufficient information to admit or deny the allegation with respect to

the key ring in Lieutenant Madigan's hand, and therefore denies it. Defendant denies the remaining allegations contained in this paragraph.

4. Defendant denies the factual allegations in this paragraph and states that the legal conclusions do not require response, however, to the extent a response is required, defendant denies all allegations in this paragraph.

5. Defendant admits that plaintiff was escorted to medical immediately following the incident. Defendant has insufficient information to admit or deny the remainder of the allegations in this paragraph, and therefore denies them.

6. Defendant admits plaintiff was in state custody on June 21, 2007 The remainder of the paragraph contains legal conclusions to which no response is required, however, to the extent a response is required, defendant denies the remainder of the paragraph.

7 This paragraph consists of legal conclusions to which no response is required, however, to the extent a response is required, defendant denies the allegations.

8. Defendant denies that plaintiff's pre-existing mental conditions were worsened by the incident. Defendant has insufficient information to admit or deny plaintiff's claim that his pre-existing physical conditions were worsened by the incident, and therefore denies all such allegations.

9. Plaintiff's request for relief is not an allegation for which answer is required. To the extent an answer is required, defendants denies that plaintiff is entitled to the requested relief or to any relief whatsoever.

10. Plaintiff's request for relief is not an allegation for which answer is required. To the extent an answer is required, defendants denies that plaintiff is entitled to the requested relief or to any relief whatsoever.

11. Plaintiff's request for relief is not an allegation for which answer is required. To the extent an answer is required, defendants denies that plaintiff is entitled to the requested relief or to any relief whatsoever.

12. Defendant denies these allegations.

13. Defendant denies these allegations.

14. Defendant admits that plaintiff is prescribed 600 mg of Neurontin to be taken orally twice daily. Defendant otherwise denies the allegations contained in this paragraph.

15. Defendant denies the allegations contained in the first sentence. Defendant admits that plaintiff suffers from nerve damage on the left side of his face and migraines and that he is prescribed 600 mg of Neurontin, but otherwise denies any remaining factual allegations contained in this paragraph.

16. Defendant denies these allegations.

DEFENSES

1. Defendant denies every allegation in plaintiff's amended complaint not expressly admitted.

2. The plaintiff's amended complaint fails to state a claim for which relief may be granted as to defendant Ross.

3. Each and every act and action of the Defendant taken with respect to the Plaintiff was done and performed in good faith, in the official discharge of his duties as an employee of the State of Maryland, and with a reasonable belief as to the constitutionality of his actions for which he enjoys a qualified immunity from liability.

4. Plaintiff's claims are barred because defendant enjoys qualified immunity from suit.

5. Plaintiff's claims are barred by failure to properly exhaust all administrative remedies available to him as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e *et seq.*

Respectfully submitted,

DOUGLAS F. GANSLER
Attorney General of Maryland

/s/

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Attorneys for Defendant

[United States District Court, Excerpt of Exhibit 1 to Lieutenant Michael Ross's Motion for Summary Judgment, filed Jan. 9, 2012]

MARYLAND DPSCS
GENERAL MEDICINE CHRONIC CARE CLINIC
FACILITY: Maryland **SITE: BCBIC**
COMPLETED BY: **12/27/2006 1:55 PM**
Gregory Ross, MD

General Medicine Chronic Clinic Enrollment Date: 07/09/2006

Subjective

34 yo BM seen for numbness and pain on left side of head and face. History of trauma to head injury 6/5/06 from fall. He had CT of heand which was negative. He has been approved for neurology consult. He stated that aspirin and motrin has affected his stomach. Also, pt c/o pruritic rash on arms.

Objective

Vital Signs

Temp: 98.00 (oral) Resp: 16 Pulse: 75 method: electronic BP: 123/81 (sitting, L arm, cuff: regular) Time taken: 1:56 PM
Weight change: none
Ideal wt: 0 lbs. Body Mass Index (BMI): .00
Height: 5 feet 8 inches

WD, BM in NAD. Neuro: decrease light touch on left side of face and head. A&O x 3. Motor intact. Skin: Dry scaly rash on the left upper arm and elbow.

Assessment

If any unresolved diagnoses have been recorded for this patient, they appear below:

ICD9 Code	Description	Onset
307.81	Headache, Tension	07/09/2006
054.0	Eczema Herpeticum	12/27/2006

Diagnosed	Severity	Status	Notes

Previous visit information:

Last degree of control: FAIR, assessed on 07/09/2006

Last status: unchanged, assessed on 07/09/2006

1. Neuropathic pain. Pt has been approved for neurologist consult. Pending consult will give a trial of Neurontin 300 mg bid.

2. Eczema

Plan

Medication Plan – if any active medications have been recorded for this patient, they appear below:

generic name	brand name	dose	sig desc	start date	stop date
Triamcinolone Acetonide	Kenalog	0.025%	apply topically to affected area twice per day	12/27/ 2006	01/27/ 2007
Gabapentin	Neurontin	300mg	take one capsule by mouth two times per day	12/27/ 2006	

1. Neurontin 300 mg bid.
2. Neurology consult.

NAME: blake, emmanuel
NUMBER: 992203362
D.O.B. [redacted]

[United States District Court, Excerpts of Exhibit 8 to
Lieutenant Michael Ross's Motion for Summary Judgment, filed Jan. 9, 2012]

Department of Public Safety & Correctional Services
Internal Investigative Unit
Criminal Investigation Report

1. Inmate's Name (Firm Name of Business) Last, First, Middle **BLAKE, Sheldon Inmate DOC#343-938**	3. Complaint Control Number CIR 0 7 3 5 0 0 8 6 8 8. General Broadcast Date & Time ☐ YES ☑ NO NA
4. Victim's Residence Address City **MD Recep-Diagnostic & Class. Center 550 E. Madison Street, Balt MD 21202**	2. Victim's Sex, Race, DOB F/B; [redacted]
6. Victim's Employer or School Attends City **NA**	5. Residence Phone 410-879-3500
	7. Business Phone NA

8. **COMPLAINANT OTHER-VICTIM-WITNESS-PARENT- V=VICTIM** (Other than in Item #1 Above); **C=COMPLAINT; P=PARENT/GUARDIAN**

9. Name (Last, First, Middle)	Code	Sex-Race-DOB	Residence Phone	Business Phone
VINCENT, Calvin-Captain		**M/B**	**NA**	**410-879-3500**
Residence Address City **Maryland Reception-Diagnostic & Classification Center 550 E. Madison Street, Balt MD 21202**				
10. Name (Last, First, Middle) **N/A**	Code	Sex-Race-DOB	Residence Phone	Business Phone
Residence Address City				

11. Crime	12. Weather	13. Date & Time Occurred	14. Day	15. Date & Time Reported
Assault	**N/A**	**6/12/07; 2150 Hours**	**Thursday**	**6/22/07; 2132 Hours**

16. Location of Crime (Address)
Male adult Correction Facility

17 Location of Offense or Type of Premise			
Housing Unit Charlie	Co. **BC**	MU	18. Sector No.

19. WAS THERE A WITNESS TO THE CRIME? ☐ NO ☑ YES

20. No. 1 Witness or Neighborhood Check (Last, First, Middle)	Sex-Race-DOB	Residence Phone	
FIELDS, Candis COII	**F/B**	**NA**	☐ INTERVIEWED
Location/Address **MD Recpt. Diagnostic & Class. Center 550 E. Madison Street Balt. MD 21202**		Business Phone **410-879-300**	☑ STATEMENT TAKEN

20. No. 2 Witness or Neighborhood Check (Last, First, Middle) **WOODARD, Latia**	Sex-Race-DOB **F/B**	Residence Phone **NA**	☐ INTERVIEWED
Location/Address **MD Recpt. Diagnostic & Class. Center 550 E. Madison Street Balt. MD 21202**		Business Phone	☐ STATEMENT TAKEN

21. SUSPECT ☑ NAMED ☐ KNOWN ☑ IDENTIFIED ☐ PREVIOUSLY SEEN ☐ DESCRIPTION ☐ NO ☑ YES						
Name (Last, First, Middle) **MADIGAN, James-Lieutenant**	Alias	Sex-Race-DOB **M/W** [redacted]	Height **NA**	Weight **NA**	Hair **NA**	Eyes **NA**
Location Address **MD Recpt. Diagnostic & Class. Center 550 E. Madison Street Balt. MD 21202**			Residence Phone **N/A**			BI # **N/A**
22. Name (Last, First, Middle) **NA**	Alias	Sex-Race-DOB **NA**	Height **NA**	Weight **NA**	Hair **NA**	Eyes **NA**
Location Address **NA**			Occupation Employer			BI #

23. SUSPECT VEHICLE ☐ STOLEN ☐ RECOVERED ☐ OTHER ☑ NO ☐ YES									
24. Vehicle Info **N/A**	Color	Year	Make	Model	Body Style	Reg. Year	Reg. State	Reg. No.	Vin #

25. ☐ SIGNIFICANT M.O., OR ☐ LIMITED OPPORTUNITY TO COMMIT THE CRIME? ☑ NO ☐ YES		
26. Mode of Operation **N/A**		
27. ☐ Scene Processing ☐ N/A Explain ☐ Photo ☐ Fingerprinting ☐ Other	Crime Lab ☐ Yes ☑ No	Crime Lab Tech.
28. WAS THERE ☑ TRACEABLE PROPERTY ☑ PHYSICAL EVIDENCE ☐ NO ☑ YES		

31. Property Insured, By Whom? **N/A**	30. Instrument, Force, Weapon **NA**	Handgun Used? ☑ NO ☐ YES
31. Property Stolen/Damaged – Item No. 1 **N/A**		Identification No.
		Value
31. Property Stolen/Damaged – Item No. 2 **N/A**		Identification No.
		Value

32. If Property Recovered Was Owner Notified? ☐ YES ☐ NO	33. How Notified (If by Miles – Give Message No., File, Originating Station & Date) **N/A**	34. Total Loss Value **N/A**

35. Vehicle from Which Make Reg. No. State Year occurred	STOLEN VEHICLE AND UNAUTHORIZED USE ONLY, COMPLETE ITEM 36.-43.	39. Vehicle Identification No. N/A

37. Registration No. State Year	38. Vehicle Year-Make-Body-Model-Color(s)	39. Ignition Locked?	40. Keys in ignition?
N/A	N/A	N/A	N/A

41. Lienholder (Name-Address-Name of Agent)	42. Doors Locked?	43. Windows Closed?
N/A	N/A	N/A

44. IS THERE SOMETHING UNIQUE ABOUT THIS CRIME ☑ NO ☐ YES

NARRATIVE: USE CONTINUATION SHEET FOR NARRATIVE. DETAIL ALL ADDITIONAL INFORMATION RELATING TO THE INVESTIGATION

Department of Public Safety & Correctional Services
Internal Investigative Unit

Supplement Report

1. Complaint Control Number: CIR 0735008686

VICTIM COMPLAINANT, MISSING PERSON OR ARRESTEE (LAST, FIRST, MIDDLE)
Shidon Blake DOC#343-938

INCIDENT, OFFENSE OR CHARGE ON ORIGINAL REPORT
Assault by Lt. James Madigan

CORRECT INCIDENT OR OFFENSE CLASS
N/A

CHANGED? ☐ Yes

SECONDARY OFFENSE
N/A

65. RELATED REPORT NUMBERS
N/A

NARRATIVE

ITEM NO.

SUBJECT OF INVESTIGATION:

Inmate Shidon Blake DOC#343-938 was allegedly assaulted by Lieutenant James Madigan on June 21st, 2007.

ADDITIONAL WITNESSES:

FIELDS, Candis
Correctional Officer II
MRDCC
550 E. Madison Street
Baltimore MD 21202
410-879-3500
Will testify that she observed Lt. James Madigan struck Inmate Shidon Blake on 6/21/2008.

WOODWARD, Latia
Correctional Officer II
MRDCC
550 E. Madison Street
Baltimore MD 21202
410-879-3500
Will testify that she observed Lt. James Madigan struck Inmate Shidon Blake on 6/21/2008.

LIST OF EXHIBITS:

1. DPSCS-IIU Duty Officer's Checklist
2. SIR-MRDCC #07-008
3. Employee Authorization for Treatment
4. Release of Responsibility-signed by Inmate Shidon Blake
5. Use of Force/MRDCC#07-008
6. Inmate Statement-Inmate Shidon Blake

45. Crime Prevention Action Initiated? ☑ No	46. Previous Crime Prevention Survey			47. Date Supplemental Report Due	
48. Initial Status recommended by reporting officer ☐ Open ☐ Suspended ☐ Unfounded ☑ Closed	49. Initial Investigator [JI] **DSGT. John Iheoma**			I.D. Number 2004	50. Date 9/30/2008
51. Supervisor Status ☑ Agree ☐ Disagree	52. Investigation to be continued by ☐ Patrol ☐ Investigation ☑ N/A	53. Reviewing Supervisor /s/ M Hoffmann **Det. Lt. Michael Hofmann**		I.D. Number 2001	54. Date 09/30/08
55. Investigation Supervisor Status ☐ Patrol ☐ Investigative ☑ N/A	56. Investigation Supervisor /s/ Jesse Ballard **Det. Captain Jesse Ballard**	I.D. Number 0200	57 Date 9/30/08	58. Assigned Investigator **DSGT John Iheoma**	59. Date 6/22/2007
60. ☐ MCIC Cleared ☐ Miles Entered ☐ Miles Cleared	61. Final Status (Check one) ☐ Open ☐ Suspended ☑ Closed	62. Classification (Office Use) 4E		63. UCR Disp. CR	64. Page 2 Of 5

Department of Public Safety &
Correctional Services
Internal Investigative Unit

1. Complaint Control Number
CIR 0 7 3 5 0 0 8 6 8

Continuation Sheet

LIST OF EXHIBITS CONTINUED:

7. Witness Statement-Cpl. Candis Fields
8. Witness Statement-Cpl. Latia Woodard
9. Witness Statement- Cpl. Michael Ross
10. Unsatisfactory Report of Service
11. OBCIS-Inmate Shidon Blake
12. DPSCS-IIU Waiver Form

ACTION TAKEN:

On June 22nd, 2007, at approximately 2132 hours, Captain Calvin Vincent assigned to the Maryland Reception-Diagnostic and Classification Center (MRDCC) advised Detective Sergeant Robert Fagan of DPSCS-IIU that during an escort of Inmate Shidon Blake DOC#343-938; DOB: [redacted] Lt. James Madigan struck Inmate Shidon Blake who was handcuffed to the rear several times in the face with his fist. Captain Calvin Vincent also advised DSGT Fagan that Inmate Blake refused medical treatment. It was noted also that Officers Fields and Woodard witnessed the entire incident.

On June 25th, 2007, at approximately 0912 hours, I was assigned case #07-35-00868 involving Lt. James Madigan and Inmate Shidon Blake.

On July 3rd, 2007, I obtained the Serious Incident Report from the Security Chiefs Office (MRDCC)

and thoroughly reviewed it. The following excerpts are from the SIR:

At approximately 2150 hours on 6/21/07, Inmate Shidon Blake DOC#343-938 was being transferred from Unit #7 Charlie cell #22 to Unit #7 Bravo cell #16 located in the segregation unit. Inmate Blake was handcuffed from behind while being escorted by Sgt. Michael Ross. Lt. James Madigan attempted to hold Inmate Blake's right arm but he refused to allow Lt. Madigan to hold his arm by pulling away from him. It was noted that Lt. Madigan attempted for the second time to grab Inmate Blake's arm, again Inmate Blake told him not to touch his arm. It was reported by Cpl. Fields that Lt. Madigan shoved Inmate Shidon Blake down the pod stairs. Cpl. Fields, Latia Woodard, Sgt. Ross and Lt. Madigan all admitted that Inmate Blake was struck by Lt. Madigan. At that point, the scuffle began and entered the seventh floor corridor. After Cpl. Woodard called for assistance, responding officers assisted in securing Inmate Blake and eventually taking him to the medical unit for treatment. Inmate Blake signed medical waiver. It was noted that Inmate Blake did not sustain any physical injuries.

On July 12, 2007, at approximately 1022 hours, I, DSGT John Iheoma arrived at the Maryland Reception-Diagnostic and Classification Center to interview Inmate Shidon Blake. I found out from the Warden (MS. Felicia Hinton) that Inmate Blake had been transferred to Western Correctional Institution (WCI). Warden Hinton also advised me that disciplinary action against Lt. James Madigan was being

considered. I attempted to interview the two correctional officers who witnessed the incident but unfortunately, Officer Fields and Officer Woodard were on their scheduled days off.

The matter of records by officers Fields and Woodard were consistent with the contents of the serious incident report. They observed Lt. James Madigan strike Inmate Shidon Blake while he was handcuffed from behind.

Memorandum written by Lieutenant James Madigan alleged that Inmate Shidon Blake who was restrained from behind lunged at him with his upper body. In an attempt to defend himself, he used his right forearm to strike Inmate Blake in his face four times.

Use of force form was completed by Major Cherie Peay. The use of force stated that while Inmate Shidon Blake was being escorted by Sgt. Ross, he was accompanied by Lt. James Madigan. As Inmate Blake was being escorted, he told Lt. Madigan not to touch him and attempted to pull his arm from Lt. Madigan. At that time, a physical altercation ensued. Lt. Madigan perceived Inmate Blake as a threat and began to use his forearm to strike Inmate Shidon Blake. Responding officers arrived and help further restrain Inmate Blake.

On June 21st, 2007, Officer Fields issued an infraction ticket on Inmate Shidon Blake charging him with rules violations #100 (Being involved in any manner with a disruptive activity. This may include demonstration, unauthorized assembly, or disturbance;

misuse, damaging, or destruction of property), 104 (Use of Threatening language)

On July 5th, 2007, at approximately 1130 hours, Inmate Blake was found guilty of rule #405 (Possession of a weapon or any article modified into a weapon). Inmate Blake was sanctioned for 15 days in segregation unit. Inmate Blake was transferred to North Branch Correctional Institution.

On September 26th, 2008 I interviewed Inmate Shidon Blake. Inmate Blake told me that he did not want to pursue this case. Inmate Blake also told me that he will sign the waiver form requesting that this case be closed (**See Exhibit #12**).

Lt. James Madigan was relieved of his duties from the Department of Public Safety and Correctional Services on 7/13/2007. This decision emanated from the incident involving Inmate Shidon Blake and Lt. James Madigan.

SUMMARY:

On June 22nd, 2007, at approximately 2132 hours, Captain Calvin Vincent assigned to the Maryland Reception-Diagnostic and Classification Center (MRDCC) advised Detective Sergeant Robert Fagan of DPSCS-IIU that during an escort of Inmate Shidon Blake DOC#343-938; DOB: [redacted] Lt. James Madigan struck Inmate Shidon Blake who was handcuffed to the rear several times in the face with his fist. Captain Calvin Vincent also advised DSGT Fagan that Inmate Blake refused medical

treatment. It was noted also that Officers Fields and Woodard witnessed the entire incident.

On July 5th, 2007, at approximately 1130 hours, Inmate Blake was found guilty of rule #405 (Possession of a weapon cr any article modified into a weapon). Inmate Blake was sanctioned for 15 days in segregation unit. Inmate Blake was transferred to North Branch Correctional Institution.

On September 26th, 2008 I interviewed Inmate Shidon Blake. Inmate Blake told me that he did not want to pursue this case. Inmate Blake also told me that he will sign the waiver form requesting that this case be closed.

The investigation reveals that Inmate Shidon Blake was struck several times by Lt. James Madigan while he was handcuffed from behind. This investigation also revealed that Lt. James Madigan lost control of his emotions and did not act professionally. Due to the conduct unbecoming of a correctional officer, Lt. James Madigan was removed from responsibilities with the agency. The investigation also revealed that there was no injury sustained by Inmate Shidon Blake. Therefore, I recommend that this case be closed with no further action.

Case Closed
Iheoma (P)
16 Hours

Initial Investigator: DSGT. John Iheoma
IBM #: 2004 Date: 9/30/2008

EXHIBIT 1

Department of Public Safety & Correctional Services
Internal Investigative Unit

Duty Officer's Checklist

Date: 6/22/2007 Time: 2132 Hrs.
Institution MRDCC
Called (full name): Capt. Calvin Vincent
Phone: 410 878 4133
Incident Date: 6/21/2007 Time: 2150

Narrative: Capt Vincent reported that during an escort Lt. James Madigan struck inmate Shidon Blake who was handcuffed to the rear, several times in the face with his fist. The inmate refused medical treatment. Officers Fields, Woodard and Sgt. Rose were present when the incident occurred.

Inmate / Employee
VICTIM Inmate Shidon BLAKE Circle One
Sex: xx Male ☐ Female DOB: [redacted]
Circle One
B / W / O Ht./Wt.: 5'9", 208
Circle One SSN#: [redacted]
Inmate DOC #: 343538 Shift: N/A

Inmate / Employee
WITNESS Officer Candle FIELDS Circle One
Sex: ☐ Male ■ Female DOB: [redacted]
B / W / O Ht./Wt.: Unknown
Circle One SSN#: Unknown
Inmate DOC #: N/A Shift: 1500/2300

Inmate / Employee

WITNESS Officer Latie WOODARD Circle One

Sex: ☐ Male ■ Female DOB: [redacted]

B / W / O Ht./Wt.: Unknown

Circle One SSN#: Unknown

Inmate DOC #: N/A Shift: 2300/0700

Region: Metro XX Western: _____ Eastern: _____

07-35 0 0 8 6 8 Code: 4

I ■ F ☐ A ☐ C ■ IR ☐ /s/ JMII 6/25/07

Investigator: IHEOMA

Investigator's Signature:

R. Fagan /s/ R. Fagan Date: 6/22/2007

☐ IIU Supervisor ☐ Clerical Staff

☐ Case Ledger ☐ Field Investigative Supervisor

PAGE 1 OF 2

Internal Investigative Unit

Duty Officer's Checklist Page 2 of 2

Date: 6/22/2007 Time: 2132

Institution MRDCC

Called (full name): Capt. Calvin Vincent

Phone: 410-878-4133

Incident Date: 6/21/2007 Time: _____

Narrative: Capt. Vincent reported that during an escort Lt. James Madigan struck inmate Shidon Blake was handcuffed to the rear, several times in the face with his fist. The inmate refused medical treatment. Officers Fields, Woodard and Sgt. Rose were present when the incident occurred.

Inmate / **Employee**
Circle One

Suspect (full name): Lt. James MADIGAN
Sex: ■ Male ☐ Female DOB: [redacted]
Circle One
AA / W / O Ht./Wt.: **N/A**
Circle One SSN#: [redacted]
Inmate DOC #: _____ Shift: **N/A**

Inmate / **Employee**
Circle One

Witness Sgt. Michael Ross
Sex: ■ Male ☐ Female DOB: [redacted]
AA / W / O Ht./Wt.: _____
Circle One SSN#: NA
Inmate DOC #: _____ Shift: **1500/2300**

Inmate / Employee

Witness **NA**
Sex: ☐ Male ☐ Female DOB: **NA**
AA / W / O Ht./Wt.: _____
Circle One SSN#: _____
Inmate DOC #: _____ Shift: **NA**

Region: Metro XXXX Western: ____ Eastern: ____
07-35 **0** **0** **8** **6** **8** Code: **4**
I ■ F ☐ A ☐ C ■ IR ☐ /s/ JMI [Illegible]
Investigator: **IHEOMA**
Investigator's Signature:
R. Fagan Date: 6/22/2007
Copy to: ☐ IIU Supervisor ☐ Clerical Staff
☐ Case Ledger ☐ Field Investigative Supervisor

Department of Public Safety & Correctional Services

Internal Investigative Unit

Prior Case History

Name: BLAKE, Sheldon **Date: June 21, 2007**

Rank: Inmate@MRDCC Case No. 07-35-00868 I/C

RECORD OF PREVIOUS COMPLAINTS

IIU Case No.	**Accused and Date**	**Disposition**

Check ✓ no prior DPSCS-IIU contact exists.

The above represents a check of the files of the Department of Public Safety and Correctional Services, Internal Investigative Unit.

Provided by:

/s/ [Illegible]
Title: Secretary I

Department of Public Safety & Correctional Services

Internal Investigative Unit

Prior Case History

Name: MADIGAN, James Date: June 21, 2007

Rank: Employee@MRDCC Case No. 07-35-00868 I/C

RECORD OF PREVIOUS COMPLAINTS

IIU Case No.	Accused and Date	Disposition
V3504-00199	09/21/1990 (s) Accidental discharge of firearm person investigated.	Archives
V3504-00003	01/05/1995 (s) Sexual Misconduct	Archives

Check ___ no prior DPSCS-IIU contact exists.

The above represents a check of the files of the Department of Public Safety and Correctional Services, Internal Investigative Unit.

Provided by:

/s/ [Illegible]
Title: Secretary I

EXHIBIT 2

[SEAL] **Department of Public Safety and Correctional Services**

Division of Correction
Maryland Reception-Diagnostic and Classification Center
550 E. MADISON STREET •
BALTIMORE, MARYLAND 21202
(410) 878-3500 • FAX (410) 783-4108 •
TTY USERS 1-800-735-2258 •
www.dpscs.state.md.us

MEMORANDUM

To: **Rory Jones, Acting Security Chief**

From: **Cherie N. Peay, Major** /s/ cnp

Date: **June 21, 2007**

Subject: **Inmate Shidon Blake 343938, SIR# 07-043, UOF# 07-008**

On June 21, 2007 inmate Shidon Blake 343938 was out for recreation on unit 7 Charlie when Corporal Candis Fields reported to Sergeants Michael Ross and Tuan Davis that inmate Blake, S was attempting to control the inmate telephones. Both Sergeants responded to the unit and secured inmate Blake, Shidon in cell 7Charlie-22. At the completion of recreation, Cpl. Fields submitted a Notice of Infraction for inmate Blake. Shidon and Lt. James Madigan and Sgt. Ross responded to 7 Charlie to escort inmate Blake, S to Administrative Segregation status on unit 7 Bravo.

During the escort from 7 Charlie to 7 Bravo, inmate Blake, Shidon refused to allow Lt. Madigan to touch him as he was being escorted and began to swing his body away from Lt. Madigan. The altercation quickly escalated as Lt. Madigan percieved that inmate Blake, Shidon was going to free himself from the control of Lt. Madigan and Sgt. Ross and become a more serious threat. Cpl. Latia Woodard, 7 Corridor Officer, called for Officer Assistance via radio. The response team arrived on the scene and escorted inmate Blake, Shidon to the medical unit for an evaluation. Inmate Blake, Shidon refused medical treatment, pictures were taken and the inmate was escorted back to cell 7Bravo-16.

[SEAL] **Department of Public Safety and Correctional Services**

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www.dpscs.state.md.us

To: Major Cherie Peay, 3-11 Shift Commander

From: Captain Calvin Vincent /s/ cv

Date: June 21, 2007

Reference: Use of Force #07-008 (Shidon Blake #343-938)

On June 21, 2007 inmate Shidon Blake 343-938 was being transferred from unit 7 Charlie cell 22 to unit 7Bravo cell 16, the segregation unit, because of his attempt to rile inmates housed on 7-C relative to using the inmates' telephones. Earlier, inmate Blake was reported to have said to inmates, in a belligerent tone, that they, as inmates, could control who uses the inmates' telephones. Because of this, he was being placed on administrative segregation. The inmate was handcuffed from behind while being escorted by Sgt. Michael Ross and refused to allow Lt. James Madigan to take hold of him to assist Sgt. Ross in the escort by snatching away from Lt. Madigan when Lt. Madigan attempted to grab his arm. It is reported by Cpl. Candis Fields that Lt. Madigan shoved inmate Blake down the pod stairs as Sgt. Ross was escorting the inmate. Corporals Fields, Latia Woodard, Sgt. Ross and Lt. Madigan all admit that Lt. Madigan hit the inmate in his face though the number of strikes and the position of the strikes vary to some degree. As the scuffle entered the seventh floor corridor Officer Woodard call for assistance, via two-way radio. As the response team arrived, inmate Blake was sitting on the floor of 7 corridor, again, with his hands cuffed from behind as Sgt. Ross stood over him while Lt. Madigan looked on. The area was deemed secured and the inmate was taken to the medical department where he was superficially examined because he refused treatment. He signed a medical waiver form.

There was no apparent injury to the inmate. However, Sgt. Ross sustained contusions to his knees as a result of falling in the scuffle. Internal investigation unit was notified the following day and assigned case number 07-35-00868 IC.

Though Lt. James Madigan wrote in his report that he feared for his safety, I conclude that the risk to his safety was negligible at best. I further conclude that the situation was escalated by Lt. Madigan's rigidness not to heed the request, then demand, of the inmate as well as Sergeant Michael Ross's comment that he, Sgt. Ross, had the inmate under control. In short, the event could have been avoided. Therefore, I recommend that Lt. James Madigan receive fifteen days suspension or forfeiture of the 120 hours of annual leave and/or mandatory use of force training. As of Monday June 25, 2007 Lt. Madigan is on administrative leave pending termination.

[SEAL] **Department of Public Safety and Correctional Services**

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MEMORANDUM

To: Felicia M. Hinton, Warden

From: Lt. James Madigan, 3-11 Shift /s/ jm

Date: June 21, 2007

Subject: Inmate Shidon Blake # 343-938-Signal 13 in 7-Corridor

Ma'am,

On June 21, 2007 I Lt. James Madigan, along with Sgt. Michael Ross, was escorting Inmate Blake, Shidon # 343-938 7C-7122 (so identified by his state ID badge) to Housing Unit 7-Bravo to be placed on Administrative Segregation (Ofc. Candice Fields had written a Notice of Infraction on the inmate due to his attempt to take over the housing unit.) As we exited the pod, Inmate Blake, who was restrained with handcuffs behind his back, kept yelling at me: "Don't you touch me!" while trying to break free from Sgt. Ross's grasp. This prompted me to grab his right arm in an attempt to quell further resistance. Inmate

Blake increased his resistance, shaking his body fiercely, causing us to lose our grasp. He then lunged forward at me with his upper body.

In an attempt to regain control (and fearing for my safety), I used my right forearm, striking his face four times. He continued to resist with the same intensity, jumping and shaking in such a manner that rendered controlling him very difficult. During this, he yelled: "You wait until I break free from these cuffs; you don't know who I am – I am with the Bloods!"

As Sgt. Ross and I struggled to regain control of Inmate Blake, Ofc. Latisha Woodard radioed a "Signal 13", which the Control Center relayed. Sgt. Ross tried to bring him to the floor by dragging his left arm, while I grabbed him around the upper torso. My legs became tangled with the inmate's, causing him to fall back. I fell on top of him, pinning him with my right forearm to his face, thus ending his resistance, and our use of force. The Quick Response Team then arrived to escort Inmate Blake to the Medical Unit for evaluation.

Respectfully submitted.

[SEAL] **Department of Public Safety and Correctional Services**

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MEMORANDUM

To: **Major Cherie N. Peay, 3-11 Shift**

From: **Lt. Ronald Joyner, 3-11 Shift**

Date: **June 21, 2007**

Subject: **Blake, Shidon 343938**

On June 21, 2007 at approximately 10:00 p.m., I, Lieutenant Ronald Joyner of the 3-11 shift, responded to a called Signal 13 on 7 Corridor. Upon my arrival to 7 Corridor with the response team I observed Sergeant Michael Ross on the floor restraining an inmate who was later identified as Shidon Blake 343938. The inmate was controlled and complied with all orders given. I then escorted inmate Blake to the medical unit for an evaluation. Once evaluated inmate Blake was then escorted to Segregation Unit 7 Bravo cell 16.

HDU Duty Lt. Pri. #1
Ph. 410-333-8732 or 410-333-1733 x 216
Maryland Division of Correction

SOU Ph: 410-585-3456 Appendix 1 to DCD 20-3
SOU FAX: 410-358-4178 E-mail: SIR@dpscs.state.md.us

☐ Preliminary Serious
☒ Final Incident Report

Control #: MRDCC - 07 - 043
Facility Year Sequence #

Incident Date: 6-21-07 Time: 2150 hrs.

Section A Incident Categories	
Priority 1	
	1a Accident Firearm Discharge
	1b Adverse Job Action
	1c Arrest, Staff
	1d Assault, Inmate, Life Threatening
	1e Assault, Staff, Life Threatening
	1f Attempted Escape
	1g Deadly Force
	1h Death, Inmate, Accidental
	1i Death, Inmate, Homicide
	1j Death, Inmate, Suicide
	1k Death, Inmate, Unknown
	1l Death, Staff on Duty
	1m Disturbance, Force Used
	1n EOC Activation
	1o Escape
	1p Fire, Fire Dept. Required
	1q Hazard, Evacuation Req.
	1r Homicide, Staff
	1s Injury, Inmate, Life Threatening

	1t	Injury, Staff, Life Threatening
	1u	Other
	1v	Security Breach Staff Needed
Priority 2		
	2a	Arrest, Inmate
	2b	Arrest, Visitor
	2c	Assault, Inmate, Weapon Used
	2d	Assault, Staff, Physical
	2e	Attempted PR Escape
	2f	Attempted Suicide
	2g	Death, Inmate, Natural
	2h	Drugs Recovered
	2i	Escape, Pre-release
	2j	Hazard, No Evacuation
	2k	Injury, Visitor
	2l	Inmate Group Protest
X	2m	Other
	2n	Secondary Medical, Inmate
	2o	State Property Damage

Section B	**Facility Notifications**	
Time Notified	**Title**	**Name**
	Commissioner	
	Deputy Commissioner	
	Asst. Commissioner	
	DOC PIO	
2127 hours	IIU	Det. Sgt. Robert Fagan
1200 hours	Warden	Felicia Hinton
	Assistant Warden	
2200 hours	Security Chief	Rory L. Jones
	Facility Administrator	
2150 hours	Shift Commander	Cherie Peay

	Reg. Health Care Admin.	
	Director Medical Services	
	Asst. Director Mental Health	
	FBI	
	State Police	
	Local Police	
	Other	
	Other	
	Other	
	Other	
	Other	

Section C Reporting Official

Incident Reported to SOU/HDU DUTY LT.

Date: 6-21-07 Time: 0047 hours

To: SIR E-mail

Name Last, First Title

By: Vincent Calvin E-mail

Name Last, First Title

Shift Commander/Designee

Peay, Cherie

Name Last, First

Cherie S. Peay 6-21-07 0049 hours

Signature Date Time

Section D Involved Inmates					
DOC #	Last Name, First Name M.I.	DOB	Race	Security Level	09
343-938	Blake, Shidon	[redacted]	B	MAX	Y
Involvement/Injury:					
Involved in a use of Force/claims injury to the left side of his face					
Sentence					
Years	Months	Beginning	Offenses		
Life	00	05-16-06	Murder first degree		

Section E Staff and/or Public Involved		
Last Name, First Name M.I.	Title	Involvement
Madigan, James	Lieutenant	Use force to subdue inmate
Joyner, Ronald	Lieutenant	Escorted inmate to medical
Ross, Michael	Sergeant	Assisted with inmate escort to segregation
Woodard, Latia	Corporal	Called for officer assistance via two-way radio
Ajasa, Olushola	Corporal	Took photographs
Fields, Candis	Corporal	Housing Unit Officer
Brooks, Prusella	Nurse	Examined Inmate

Section F Escape Information		
	Date	Time
Last Accounted For	N/A	N/A
First Unaccounted For	N/A	N/A
Arrived at Pre-Release	N/A	N/A
		Result
Last Parole Hearing	N/A	N/A
Was Inmate Arrested	Yes ☐	No ☐
History of Escape	Yes ☐	No ☐

Section G	Description of Incident/ Action Taken
On June 21, 2007 inmate Shidon Blake 343-9383 was was being transferred from unit 7 Charlie cell 22 to unit 7 Bravo cell 16, the segregation unit, because of his attempt to rile inmates housed on 7-C relative to using the inmates' telephones. Earlier, inmate Blake was reported to have said to inmates, in a belligerent tone, that they, as inmates, can control who uses the inmates' telephones. Because of this, he was being placed on administrative segregation. The inmate was handcuffed from behind while being escorted by Sgt. Michael Ross and refused to allow Lt. James Madigan take hold of him to assist Sgt. Ross in the escort by snatching away from Lt. Madigan when Lt. Madigan attempted to grab his arm. It is reported by Cpl. Candis Fields that Lt. Madigan shoved inmate Blake down the pod stairs as Sgt. Ross was escorting the inmate. Corporals Fields, Latia Woodard, Sgt. Ross and Lt. Madigan all admit that the inmate was hit by Lt. Madigan though the number of strikes and the position of the strikes vary to some degree. As the scuffle entered the seventh floor corridor Officer Woodard called for assistance, via two-way radio. As the response team arrived, inmate Blake was sitting on the floor of 7 corridor, again, with his hands cuffed from behind as Sgt. Ross stood over him while Lt. Madigan looked on. The area was deemed secured and the inmate was taken to the medical department where he was superficially examined because he refused treatment. He signed a medical waiver form. There was no apparent injury to the inmate. However, Sgt. Ross sustained contusions to his knees as a result of falling in the scuffle. Internal investigation	

unit was notified the following day and assigned case number 07-35-00868 IC. Dispciplinary actions are pending based on the outcome of the final investigation.

[SEAL] DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
OFFICER'S USE OF
FORCE INCIDENT REPORT

(USE CONTINUATION SHEET, AS NEEDED)

☒ DIVISION OF CORRECTION
☐ DIVISION OF PRETRIAL & DETENTION SERVICES
☐ DIVISION OF PAROLE & PROBATION
☐ PATUXENT INSTITUTION

TO: SHIFT COMMANDER/BUREAU CHIEF

DATE OF INCIDENT: 6-21-07 TIME OF INCIDENT: 9:45 p.m. A.M. P.M.

LOCATION: 7 Corridor

OFFICER INVOLVED:

Lt. James Madigan

Sgt. Michael Ross

OFFENDER(S)/DETAINEE(S) INVOLVED:

Blake Shidon # 343-938

CHECK IMPLEMENTS OF FORCE USED:

☐ Pepper Spray ☐ Pepper Ball ☐ Baton
☐ Stun Shield ☐ K-9 ☐ Chemical Agents
☐ Firearm (Revolver, Shot Gun, or Rifle)
☒ Hands, Feet, Defensive Holds, Etc. ☐ Other

DETAILS OF USE AND EFFECT OF USE:
On June 21, 2007 at 9:45 p.m., I, Lt. James Madigan, along with Sgt. Michael Ross, was escorting Inmate Blake Shidon # 343-938 off of Housing Unit 7 Charlie to be placed on Administrative Segregation. As we exited the pod, Inmate Blake, who was restrained with handcuffs, kept yelling at me: "Don't you touch me." He was trying to break from Sgt. Ross's grasp, prompting me to grab his right arm to attempt to move him toward Housing Unit 7-Bravo. The inmate increased his resistance, struggling to break free from our grasp, and lunging toward me. In an attempt to subdue him, I used my right forearm to his face four times. Inmate Blake continued to resist and yelled: "You wait until I break free of these cuffs; you don't know who I am – I am with the Bloods!" As we struggled, Ofc. Latisha Woodard radioed a Signal-13, which the Control Center relayed. Sgt. Ross tried to bring him to the floor by dragging his left arm while I grabbed him around the upper torso. My legs became tangled with the inmate's, causing him to fall back. I fell on top of him.

CONTRABAND DISCOVERY/SEIZURE:
n/a

INJURIES SUSTAINED AS A RESULT OF USE:
☒ OFFENDER/DETAINEE ☐ STAFF ☐ OTHER
PERSON(S) REQUIRING MEDICAL AID:
Blake, Shidon # 343-938
PERSON(S) REQUIRING MEDICAL AID:

PERSON(S) REQUIRING MEDICAL AID:

REPORTING
OFFICER: Lt. James Madigan DATE: 6-21-07
SIGNATURE

Lt. James Madigan
PRINT

SUPERVISOR: Cherie S. Peay
RANK/TITLE: [illegible] DATE: 6-21-07
SHIFT: 3-11
SUPERVISORS COMMENTS: ~~none~~ INCIDENT REQUIRES FURTHER INVESTIGATION

CONTINUATION SHEET

pinning him with my right forearm to his face, thus ending his resistance, and our use of force.

REPORTING
OFFICER: Lt. James Madigan DATE: 6-21-07
SIGNATURE

Lt. James Madigan
PRINT

SUPERVISOR: Cherie S. Peay
SHIFT: 3-11 DATE: 6-21-07
SUPERVISORS COMMENTS:

CC: Warden, Asst. Warden, Security Chief, Use of Force Files

[SEAL] DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

- ☒ Division of Correction
- ☐ Division of Pretrial and Detention Services
- ☐ Division of Parole and Probation
- ☐ Patuxent Institution

WITNESS STATEMENT

Name: Michael Ross

Address: 550 E. Madison St. Telephone Number 410-878-3500

Where Statement Was Given: M.R.D.C.C. Time: 11 55/PM

Witness Statement of Facts (What Happened):

I Sergeant Michael Ross at approximately 9 50/PM was called by Lieutenant James Madigan to 7 corridor to assist in the escorting of inmate Blake Shidon – 343938 – 7c-7122. I approached Cell #7C-22 with Lt. J. Madigan and Lt. J. Madigan ordered the above inmate to pack up his clothes. The above inmate stated "For what". I then asked Lt. J. Madigan do you want me to open the cell door he said no wait until he finish packing his clothes. Approximately one minute later Lt. J. Madigan told me to open the cell door. I opened the cell door and the above inmate was standing in the doorway saying "Why I am going on lock up." Lt. J. Madigan said your going to receive a ticket for trying to start a riot on this pod. While Lt. J. Madigan was making that statement he was holding his handcuffs approximately 10" away from his body in front of him. The above inmate stated: "I wasn't trying to do nothing". Lt. J. Madigan said you turned the T.V. off. The above inmate said "I don't

even look at T.V. the officer is lying". Approximately one and a half minutes later Lt. J. Madigan was still holding the handcuffs out in front of himself saying to the above inmate you will have a hearing but you still have to go on lockup. At this time, I reached for my handcuffs and handed the pod keys to Lt. J. Madigan and stepped into the cell and told the above inmate your going on lockup. The above inmate said "Okay ross your cool. I then placed the first handcuff on the inmates right wrist and then the inmate put his hands in front of him and I placed the inmates hands in back of him and put the second handcuff on him. At this time I was escorting the above inmate out of his cell when Lt. J. Madigan grabbed the inmates arm the above inmate said "get the fuck off of me". I then started going down the pod steps and as I got to the bottom of the steps the above inmate said "get the fuck off of me. Lieutenant Sgt. Ross got me. You didn't come talk to me before so don't touch me now". At this time I said "I got him Lieutenant. I am okay I got him". Lt. J. Madigan didn't respond. I then started escorting the above inmate toward 7C pod door that leads off the pod to 7 Corridor when I noticed Corporal Candis Fields who is assigned to 7C pod standing by the door. I told her to move away from the door while I was escorting the above inmate pass her. I then escorted the above inmate off the pod to the corridor by holding his left arm. Once we reached the Corridor the above inmate started twisting his arms and body from side to side saying "get the fuck off of me". He was saying this to Lt. J. Madigan who had grabbed the above inmates right arm. I then started pulling the inmate toward 7B pod that is located on the other end of the Corridor. At this time I noticed

Lt. J. Madigan swing his right arm toward the above inmates face making contact with the inmates face. I didn't notice anything in Lt. J. Madigan's hand at this time or no other time during this incident. I continued struggling and pulling the above inmate toward 7B pod when the above inmate said "Ross he hit me in my face". I then moved the inmate toward the wall and stared him in his eyes and said "Come on". The above inmate was still twisting his body trying to get Lt. J. Madigan off of his arm. I took approximately five steps while still pulling the above inmate the inmate said "Ross he hit me again". I didn't see the claimed hit. At this time Lt. James Madigan told Corporal Latia Woodard who is assigned to 7 Corridor to spray the above inmate with mace. Cpl. L. Woodard said "No just let him go". Lt. J. Madigan said in a loud tone "mace him". I then told Cpl. L. Woodard to call a signal-13 (officers Fighting) and I observed her reaching for her radio. At this time I told inmate Blake, S-343938 that I was taking him to the floor and he said "okay". At this time while trying to pull the above inmate to the floor our feet entangled and the above inmate and Lt. J. Madigan and myself fell on the floor. I then told Lt. J. Madigan "I got him I got him". The above inmate started yelling "Pick me up ross". I then told him to calm down. I have to wait for my team. approximately 15 seconds

The above statement is true and correct to the best of my knowledge and belief. It was given solely due to my volunteering the information. Therefore, I was not coerced or forced to give the same.

/s/ Michael Ross	6-21-07
WITNESS SIGNATURE AND NUMBER	**DATE**
Capt. Calvin Vincent 5 of 6	6/21/07
WITNESS TO STATEMENT	**DATE**

[SEAL] DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

☒ Division of Correction ☐ Division of Pretrial Detention and Services

☐ Division of Parole and Probation ☐ Patuxent Institution

WITNESS STATEMENT

Name: Latia Woodard

Address: 550 E. Madison St.

Telephone Number 410-878-4132

Where Statement Was Given: MRDCC

Time: 2155

Witness Statement of Facts (What Happened):

On June 21, 2007 at approximately 9:50 p.m., I Cpl. Latia Woodard was assigned to 7 corridor and was standing at 7 charlies doorway observing Lt. James Madigan and Sgt. Michael Ross escorting inmate Blake, Shidon 343928 from cell 22 to 7 bravo. As inmate Blake was coming out of his cell handcuff to the back Blake told Lt. Madigan not to touch him. Sgt. Ross escorted inmate Blake down the stairs and as they were walking out of the door Lt. Madigan

grabbed Blakes arm. Inmate Blake tried to pull away from Lt. Madigan and as he's pulling away he's telling Lt. Madigan to get off of him but he continues to holding on to him. Inmate Blake stops at the door and tells Lt. Madigan again to let him go but Lt. Madigan does not. Inmate Blake would not move and Lt. Madigan hit Blake in his jaw. I Cpl. Woodard repeatly told Lt. Madigan to let inmate Blake go and let Sgt. Ross escort him to 7 bravo but he did not listen. Inmate Blakes says hit me again and Lt. Madigan hits Blake repeatly in his jaw. Inmate Blakes tries to knee Lt. Madigan but was not successful. As Lt. Madigan, Sgt. Ross and inmate Blakes are walking towards the elevator Lt. Madigan tells me Cpl. Woodard to mace Blake and my response was no and that's when Sgt. Ross told me to call a signal 13. Approximatley 9:56 p.m. a response team arrived on the corridor and escorted inmate Blake to medical. This report is submitted for your records.

The above statement is true and correct to the best of my knowledge and belief. It was given solely due to my volunteering the information. Therefore, I was not coerced or forced to give the same.

/s/ Latia Woodard RC041	6/21/07
WITNESS SIGNATURE AND NUMBER	**DATE**
/s/ Cherie S. Peay	6-21-07
WITNESS TO STATEMENT	**DATE**

[SEAL] DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

☒ Division of Correction ☐ Division of Pretrial Detention and Services

☐ Division of Parole and Probation ☐ Patuxent Institution

WITNESS STATEMENT

Name: Cpl. Candis Fields 3x11

Address: 550 E. Madison St.

Telephone Number 410 878 3580

Where Statement Was Given: MRDCC

Time: 640 p

Witness Statement of Facts (What Happened):

On the above date and time, I Cpl. Candis Fields was assigned to 7 charlie. Upon beginning top tier evening recreation and phone list, inmate Blake, Shidon #343938 7C-22 turned off the pod's television and stated, "which one of you told her to run a phone list? We run our own phone list up here. We men." Inmate Blake, Shidon #343938 then stated to me, Cpl. Fields "you need to fall back and let us run this: We can run our own phone list." I then stated to inmate Blake, Shidon #343938 "as the pod officer I will run a phone list to ensure that everyone gets a fair turn on the phone." Inmate Blake, Shidon #343938 then stated to another inmate "she goin' cause somebody to get hurt." I then informed Sgt. Michael Ross and Lt. James Madigan of my observations and inmate's statements. At 715 p Sgt. Michael Ross and Sgt. Taun Davis entered 7 charlie and secured inmate Blake,

Shidon #343938 7C-22 into his cell without force or incident. At 810 p Lt. James Madigan called 7 charlie and I, Cpl. Fields requested that inmate Blake, Shidon #343938 7C-22 be moved off of unit 7 charlie due to several inmates stating that inmate does not allow others to use the telephone unless he approves. Inmates also stated that Blake, Shidon #343938 7C-22 intimidates other inmates by stating that he's head of the Bloods. Lt. Madigan then stated to me, Cpl. Fields "well the only way he'll be moved is if you write a ticket on him with charges 100 104 312 405." I, Cpl. Fields then proceeded to write a notice of infraction with these listed charges to ensure that inmate Blake, Shidon #343938 7C-22 was no longer a threat or concern to other housed inmates. At 940 p, Lt. Madigan came onto 7 charlie along with Sgt. Michael Ross and requested my handcuffs. I then handed him the handcuffs and we all proceeded to cell 7122. Lt. Madigan then ordered Blake, Shidon #343938 to "pack up." Inmate then inquired "Why?" Lt. Madigan stated "you're Mr. Tough Guy trying to take over a unit. Let's go." Inmate then packed up his things and I, Cpl. Fields handed Lt. Madigan my podset keys #241 and proceeded to the officer's level of the unit. Lt. Madigan and Sgt. Ross then secured inmate by means of handcuffs and proceeded down the steps. Inmate Blake, Shidon #343938 began to be slowful coming down the steps being escorted by Sgt. Ross when Lt. Madigan began to shove inmate in a forceful way down the steps. Inmate Blake, Shidon #343938 began to shout obsene remarks to Lt. Madigan. Inmate continued these remarks until reaching

the threshold of 7 charlie where Lt. Madigan with keyset #241 in a closed fist struck inmate Blake, Shidon #343938 7C-22 repeatedly on the right side of his jaw with his right hand. Inmate Blake, Shidon #343938 7C-22 then became very agitated stating "let me go, you hit me in my fucking mouth take these cuffs off." Inmate stated this statement repeatedly with Sgt. Ross trying to remain in control of inmate. At 955 p, Cpl. Latia Woodard assigned to 7 corridor made a radio transmittion "signal 13 7 corridor" due to Sgt. Ross and Lt. Madigan unable to gain control of inmate Blake, Shidon #343938 7C-22. Inmate was clearly identified by his DOC badge, escorted to the medical unit, and then housed in 7B-16 by Cpt. Calvin Vincent. This is submitted for your information.

The above statement is true and correct to the best of my knowledge and belief. It was given solely due to my volunteering the information. Therefore, I was not coerced or forced to give the same.

/s/ Candis Fields	6-21-07
WITNESS SIGNATURE AND NUMBER	**DATE**
/s/ Cherie S. Peay	6-21-07
WITNESS TO STATEMENT	**DATE**

Documentation Reviewed:

☐ Use of Force Reports ☐ Shift Supervisor's Report

☐ Video Tape ☐ Staff Incident Report

☐ Photographs ☐ Medical Report

☐ Shift Supervisor's Report ☐ Staff Incident Report

☐ Other Specify: _____

This Evaluation Committee has determined:

☐ The action taken with respect to this use of force incident was reasonable and necessary.

☐ This incident needs further investigation and has been referred to ___ (print name of individual)

☐ A copy of this packet was sent to the Commissioner/ Director.

Other Action Recommended: _____

Administrative Evaluation Committee		**Date Reviewed**	**Time Reviewed**
James B. [Illegible]	/s/ James B. [Illegible]	7/2/07	8:30 p
Printed Name	Signature		
Rory L. Jones	/s/ Rory L. Jones	7/2/07	5:45 pm
Printed Name	Signature		

P/1 OBSCIS OFFENDER FUNCTION

MAINTAIN DETAINER DATA

PAGE 1

DATE: 06/21/07

TIME: 22:29

#: 343938 BLAKE SHIDON

ACTION	: ___
SEQUENCE	: 001
TYPE	: 12 MD WARR
OFFENSE CODE 1	:
OFFENSE DESC 1	:
OFFENSE CODE 2	:
OFFENSE DESC 2	:
JURISDICTION	: 028 OUT OF STATE
AGENCY	: 829 FL MIAM-DAD PD
CONTACT INFORM	:
DATE PLACED	: 12 08 2006
SENT LENGTH	: Y M D Y M D Y M D
CASE NUMBER	: F021998413
DATE	: 06 04 2007
PER	: DAVIS T TA
LIFTED	:
DATE LIFTED	:

– INQUIRY ONLY.

———

P/1 OBSCIS OFFENDER FUNCTION

MAINTAIN LEGAL DATA

PAGE 1
DATE: 06/21/07
TIME: 22:30

#: 343938 BLAKE SHIDON

CURR. RELEASE DATE: __ __ ____

TOTAL TERM OF CONFINE: Y M D

MAX EXPIRATION DATE:

ACTION	: ___	___
SENTENCES #	: 01	02
TYPE	: 15 LIFE ORG	02 CC
SENT IMPOS DATE	: 05 30 2007	05 30 2007
OFFENSE CODE	: 101 HOMICIDE	104 HOMICIDE
OFFENSE DESC.	: MURDER 1ST DEGREE	MURDER 2ND DEGREE
SENT LENGTH	: Y M D	Y 030 M 00 D 000
SENT START DATE	: 05 16 2006	05 16 2006
COURT	: 30A BCI-CIR-CT	30A BCI-CIR-CT
INDICTMENT #	: 00106177029	00106177028
TRACKING #	: 061001288740	061001288740
JURISDICTION	: 003 BALTIMORE CITY	003 BALTIMORE CITY
DATE OF OFFENSE	: __ __ ____	__ __ ____
ACM	: CL CR2 201	CR 2 204
COMMENTS	: __ __ __ __ __ __	__ __ __ __ __ __
DATE ENTERED	: 06 04 2007	06 04 2007
[ILLEGIBLE]	: DAVIS T TA	DAVIS T TA

– INQUIRY ONLY.

____

[SEAL] **Department of Public Safety and Correctional Services**

Division of Correction
Maryland Reception-Diagnostic and Classification Center

550 E. MADISON STREET • BALTIMORE, MARYLAND 21202
(410) 878-3500 • FAX (410) 783-4106 • TTY USERS
1-800-735-2256 • www.dpscs.state.md.us

MEMORANDUM

TO: Mrs Rory L. Jones, Security Chief.

FROM: Lt. James Madigan, 3-11 Shift [JM]

DATE: June 22, 2007

SUBJECT: Sgt. Michael Ross: On the job injury preventability.

Ma'am:

On June 21, 2007 at 9:55 p.m., Sgt. Michael Ross was assisting with the escort of Inmate Blake, Shidon # 343-938 from 7-Charlie to cell 7B-7216. It was then that the inmate put up resistance, and, in the ensuing struggle, caused Sgt. Ross to fall, landing hard on his knees.

Upon interviewing Sgt. Ross, and reviewing the photographs, I find that the accident was not preventable, as the incident involved an inmate resisting and interfering with an officer in the performance of his duties.

Respectfully submitted.

MRDCC INMATE STATEMENT FORM

In your own words please describe the actual facts of the alleged incident:

I was confronted by Ms. Feilds after returning from DNA testing about using the phone out of turn but she was wrong. Inmate Spears gave me his space because I missed mine. Ms. Fields plays around alot, when I see her but Im not a guy who makes and play with her at all. So I responded to her with the inmate whose time I was using everything was over. 20 minutes or so later Sgt. Ross and another Sgt. enters the unit and approach me. They tell me to lock in, now its my rec time and rec wasn't over but I still obeyed without incident. I ask to speak to a higher supervisor because I didn't understand why I had to lock in early. ~~Mean while a half an hour goes by~~ OK Sgt. with Ross said the LT said lock me in because I was "comendeering the TV" was the exact words he used. Which is not true you can ask the unit. I dont even watch the TV at all. About a half hour later Ms. Fields lets a new cell mate in my cell and I asked her why would she make things up about the TV she said in front of the new dude in cell 22 I never said you did that. Also the working men and others were in the pod. She laughs and says you scare my inmates. The Musilum working man replies hehe no he don't the man is alright. Ms Field shuts the door. Im in bed now and about another 30 min this white dude LT and Sgt. Ross approached my cell and the LT told me to lock up I asked why he said your moving and pack up with a foul attitude. I packed my things without any problem and asked what did I do he said you like

to run things. I asked him and Sgt. Ross what was he talking about. He said my officer told me and I believe it. Lets go. So I am leaving with the cuffs on behind me and LT grabs me up after Sgt. Ross already had me walking me down the stairs. LT is pushing behind kind a I said look Im going with Ross with no problem he can leave me alone – he never stopps. OK we get outside the unit and LT. balls his fist up with the keys in his hands and pounds me in my face on my left side of my head and my left eye. I told him several times he had no right punching me cause I was not fighting him and I was being taken out by Sgt. Ross. The whole time he's punching me in the face I couldn't do nothing but yell obsenaties at him because at this time Im not I called him a few bitches yes but after he had already punched me about 5 good times. Sgt. Ross just let him do it Im asking him why would he let the man just punch me. Then LT calls for the hall CO telling her to mase me and she replied why Just let him get to the pod "I [illegible] she even said that." By this time Im on my side telling Sgt. Ross "Man I was going he had no right punching me like that. So I layed on the ground until the other team of officers responded. I asked Sgt. Ross & the LT for the record for the chain of command respectfully and while I was cooperating with their directions and I was attacked by this LT while unable to defend myself. I was taken to Medical photographed medicated and escorted to lock up. I am asking for a formal internal investigation. I have the utmost respect for the job you all have to do and I will not be going any further with this situation outside

this institution. I also am a highly influential person and I give my word that there will be no revenge.

/s/ Shidon Blake

P.S. I will repeat this exact statement under oath at any time you need. Please investigate this incident.

Shaidon Blake	7C 22	6-21-07
Inmate Signature	Unit/Cell Number	Date/Time

Capt. Calvin Vincent
Witness appx. 10:30 pm

Report Over

EXHIBIT 3

CONCENTRA
MEDICAL CENTERS

EMPLOYER'S AUTHORIZATION FOR EXAMINATION OR TREATMENT

(MUST PRESENT PHOTO ID AT TIME OF SERVICE)

Patient Name: Sgt. Michael Ross SSN: [redacted]

Company Name: MD Reception Diagnostic and Classification

Date of Birth: [redacted]

Location #/Street Address: 550 E. Madison St. Baltimore MD 21202

Date of Injury: 6-21-07

Temporary Staffing Agency: -NA-

WORK-RELATED
✓ INJURY ___ ILLNESS
Post-Accident Substance Abuse Testing:
___ Drug Screen
___ Breath Alcohol
___ Drug Screen and Breath Alcohol
___ Urine Collection Only
___ DOT Regulated
___ Non-regulated

DOT PHYSICAL
___ Preplacement
___ Recertification
___ Exit
___ Audiogram
___ Regulated Drug Screen
___ Urine Collection Only
___ Breath Alcohol

PRE-PLACEMENT EVALUATION
Job Title: _____
___ Physical Exam
___ HPE
___ Regulated Drug Screen
___ Non-regulated Drug Screen
___ Urine Collection Only
___ Hair Collection
___ Audiogram

SUBSTANCE ABUSE TESTING
___ Regulated
Non-regulated
Urine Collection Only
___ Rapid Test
___ Pre-placement
___ Reasonable Suspicion
___ Random
___ Periodic
___ Post-accident
___ Follow-up
___ Breath Alcohol

SPECIAL PHYSICAL EXAMINATIONS
___ Asbestos
___ Respirator
___ Hazmat
___ Baseline
___ Other _____
_____

BILLING
___ Employee to pay charges at time of service
___ Workers' Compensation
Insurance Co: _____
Policy #: _____
Phone #: _____

Authorized By: Lt. James Madigan Title: Lieutenant

Phone: [redacted] Date: 6-22-07

These are the questions you will be asked concerning the injured employee(s):

Employer/Policy Verification:

Company Name & Address:
The Maryland Reception center
550 E. Madison Street, Baltimore, Maryland 21202

Policy Number: 911285

Name, position and telephone number of personnel reporting the injury:

James Madigan, Lt. [redacted]

Provider Information: At what provider clinic or hospital did the injured worker seek treatment?

Concentra-Downtown

Injured Worker's Information: Injured worker's last name, first and middle initial and phone #

Ross, Michael W. #[redacted]

Date of Injury and Time: 6-21-07 Social Security Number: [redacted]

Date of Birth: [redacted]

Address: [redacted] Gender: Male

Marital Status: Single Job title and Annual Salary: Sergeant, [redacted]

Date Hired: 7-16-86 Where did the incident take place: 7 corridor

Who was notified & what day: Capt. Calvin Vincent; G-22-07

Will they be paid for that day: yes

Injury description:

Part and side of the body affected:
Both knees

Brief description of how the injury occurred: While struggling to subdue Inmate Blake, Shidon #343-938, Sgt. Ross fell on both knees

Prior Work Injury:

Does the injured worker have any previous work injuries: none known

Lost Time Status

What was the last day worked: 6-21-07

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
RISK MANAGEMENT ADMINISTRATION

WORK-RELATED INJURY –
CLAIM MANAGEMENT

SUPERVISOR INVESTIGATION REPORT

INSURANCE FRAUD IS A FELONY FALSE OR MISLEADING REPORTS OF INJURY VIOLATE THE DEPARTMENT'S STANDARDS OF CONDUCT

Name of Employee (Claimant): Ross Michael
Last First Middle

SSN: [redacted] Date of Injury: 6/21/07 Time of Injury: 945 AM [PM]

Injured Workers Insurance Fund Claim No. 6197400

Date of Investigation: 6/22/07 Time of Investigation: 310 AM [PM]

Important: Ensure that the claimant's "First Report of Injury (FROI)" and their "Acceptance or Waiver of Medical Evaluation" forms are completed and signed. Review the 'FROI' prior to starting your investigation. Interview the claimant at the time they report the claim. Witnesses named by the claimant on the 'FROI' should be interviewed separately and documented on the "Witness Statement"

Investigation (Narrative, attach photographs, use additional sheet as necessary):

On the above time and date, Sgt. Michael Ross was helping to subdue Inmate Blake, Shidon #343-938, while assisting the escort of that inmate to 7 Bravo. During the struggle, Sgt. Ross fell hard on both knees. He also complained of back pains

In your opinion, based on your investigation, is this claim valid? [Yes]/No

If "No", then please explain: _____

Signature/Title of Claimant's Supervisor Lt. James Madigan Date 6/21/07

Signature/Title of Investigator Lt. James Madigan Date 6/21/07

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
RISK MANAGEMENT ADMINISTRATION

**WORK-RELATED INJURY –
CLAIM MANAGEMENT**

**ACCEPTANCE OR WAIVER OF
MEDICAL EVALUATION**

INSURANCE FRAUD IS A FELONY FALSE OR MISLEADING REPORTS OF INJURY VIOLATE THE DEPARTMENT'S STANDARDS OF CONDUCT

I, Michael Ross, an employee of the Maryland Department of Public Safety and Correctional Services, have reported a work-related injury or illness to my

employer in accordance with the *Secretary's Directive 04-90, Section VII. A. 1.*

My injury or illness, as determined by me, required 'first aid' treatment, which was offered to me, or provided to me at my request, by my employer.

My employer has offered me the opportunity for my injury or illness to be medically evaluated by a medical provider selected or accepted by the appointing authority.

I understand that my employer, at their discretion, may direct me for medical evaluation of my injury or illness to a medical provider selected or accepted by the appointing authority regardless of my choice to be or not to be medically evaluated.

Therefore, I choose to:

- ☐ **Waive medical evaluation for my injury or illness claim**
- ☑ **Be medically evaluated for my injury or illness claim**

Medical Provider: Concentra
Name of Physician, Hospital, or Clinic

Address: Baltimore, MD
City/State

Was the employee evaluated or treated in an emergency room? Yes/No

Was the employee hospitalized overnight as an inpatient? Yes/No

---

Claimant Signature: Michael Ross Date: 6/22/07

Witness Signature/Title:
Lt. James Madigan Date: 6/22/07

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
RISK MANAGEMENT ADMINISTRATION

EMPLOYEE "FIRST REPORT OF INJURY"

INSURANCE FRAUD IS A FELONY FALSE OR MISLEADING REPORTS OF INJURY VIOLATE THE DEPARTMENT'S STANDARDS OF CONDUCT

Employee Name: Ross, Michael Warren
Last First Middle

Date of Injury: 6/21/07 **Time of Injury**: 955/AM/[PM]
Time Work Started: 248/AM/[PM]

Injured Workers Insurance Fund Claim No. 6197400 **(ALL CLAIMS)**

OSHA 300 Log Case No. ___ (IF A RECORDABLE INJURY/ILLNESS)

- What were you doing *prior* to the injury? at Lunch

- Please explain fully how this injury occurred, from the beginning to the end:

  at approximately 950/PM I was involved in a fight with inmate Blake, Shidon 343938 and I fell to the floor hitting both my knees on the floor hurting my knees and back.

- What caused your injury? me hitting the floor
- Where were you when the injury occurred? M.R.D.C. on 7 Corridor
- Who did you first report the injury to? Captain Calvin Vincent
- Who witnessed you being injured? No one
- Who is your immediate supervisor? Lieutenant James Madigan

Do you want to see a physician for medical evaluation of your injury? [**Yes**]/**No**

Note: **Please sign the 'Waiver or Acceptance of Medical Evaluation'** form in this packet.

Signature: Michael Ross *Date:* 6/22/07

INSURANCE FRAUD IS A FELONY FALSE OR MISLEADING REPORTS OF INJURY VIOLATE THE DEPARTMENT'S STANDARDS OF CONDUCT

Personal Information

SSN: [redacted] Sex: [M]/F DOB: [redacted]
Home Phone (410) [redacted]

Home Address: [redacted]
Street City State Zip

Marital Status: Married/[Single]/Divorced
No. of Dependent Children: [redacted]

Job Title: Correctional Officer Date Hired: 7/16/86
Bi-Weekly Salary $ [redacted]

Primary Care Physician: Unknown

- Address : _____
  Street City State Zip
- Phone : (___) _____
  Area Code

EXHIBIT 4

REGION Balt. FACILITY MDCC INMATE NAME Blake Shaidon

==========

Department of Public Safety and Correctional Services

RELEASE OF RESPONSIBILITY

I hereby acknowledge that I have been informed by appropriate medical personnel as to my medical condition.

(State nature of condition) State he was in physical altercation

Against the advice of said medical personnel, I refuse to have:

☐ Blood drawn _____

☒ Physical Examination [Illegible] physical altercation per security

☐ Medication(s) _____

☒ Other Medical evaluation per security request

I further acknowledge that I have been informed of the risks involved, and accept full responsibility for this action, and hereby release the attending physician and other health services staff from responsibility/ liability for any complications or undesirable results arising from my refusing the above stated treatment.

==========

Date: 6-21-07

Inmate Printed Name	*Signature*
Shaidon Blake *DOC#* 343938	Shaidon Blake
Witness # 1 Printed Name	*Signature*
[Illegible]	[Illegible]
Witness # 2 Printed Name	*Signature*
Calvin Vincent	Calvin Vincent

(A second witness is required if patient refuses to sign release)

EXHIBIT 5

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
USE OF FORCE PACKET
[SEAL] **COVER SHEET**

DATE: June 21, 2007

TO: Acting Security Chief Rory Jones
Chief of Security/Executive Director/ Administrative Evaluation Committee (circle appropriate title)

FROM: Major Cherie N. Peay
Shift Commander/Bureau Chief/ Chief of Security (circle appropriate title)

RE: **Use of Force No.** 07-008

SUMMARY:

On June 21, 2007 inmate Shidon Blake 343938 was being transferred from unit 7 Charlie cell 22 to unit 7 Bravo cell 16. Sergeant Michael Ross restrained inmate Blake, Shidon from behind and attempted to escort him to 7 Bravo for Administrative Segregation status. Lieutenant James Madigan accompanied Sgt. Ross in the escort. As inmate Blake, Shidon was being escorted he told Lt. Madigan not to touch him and attempted to pull his arm away from Lt. Madigan. At this time a physical altercation escalated as Lt. Madigan percieved inmate Blake, Shidon to be a threat. Lt. Madigan believed that inmate Blake, Shidon had the potential to free himself from Sgt. Ross and become a physical threat to himself. Lt.

Madigan used his right forearm to strike inmate Blake, Shidon several times until Sgt. Ross was able to take inmate Blake, Shidon down to the floor seperating him from Lt. Madigan. Corporal Latia Woodard was assigned to 7 Corridor and called via radio for Officer Assistance.

FINDINGS/RECOMMENDATIONS:

In accordance with the Use of Force procedures, Reactive Use of Force was used as the situation quickly escalated to control the inmate. However in accordance with the Use of Force continuum, Confrontation Avoidance procedures were omitted and the Less than lethal force utilized is questionable to the level of force used needed to control the situation. Further investigation into this incident has been assigned.

SIGNATURE: Major Cherie N. Peay

[SEAL]

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
USE OF FORCE REPORT

☒ DIVISION OF CORRECTION
☐ DIVISION OF PRETRIAL & DETENTION SERVICES
☐ DIVISION OF PAROLE & PROBATION
☐ PATUXENT INSTITUTION

	FACILITY	YEAR	SEQUENCE #
UOF #	MRDCC	07	008
SIR #	MRDCC	07	043

1. INSTITUTION/OFFICE: MRDCC
2. INCIDENT DATE/TIME: 6/21/07 @ 2:55 p.m. AM PM
3. SPECIFIC LOCATION OF INCIDENT: 7-C pod and 7 corridor

4. SENIOR RANKING STAFF ON SCENE:

NAME	RANK/TITLE	INJURY?	REPORT ATTACHED? Yes	REPORT ATTACHED? No	MEDICAL REQUIRED? Yes	MEDICAL REQUIRED? No	MEDICAL RECEIVED? Yes	MEDICAL RECEIVED? No
James Madigan	Lt.	none	☒	☐	☐	☒	☐	☒

5. ADDITIONAL STAFF INVOLVED:

Michael Ross	Sergeant	contusions to knees	☒	☐	☒	☐	☒	☐
Candis Fields	CO II	none	☒	☐	☐	☒	☐	☒
Latia Woodard	CO II	none	☒	☐	☐	☒	☐	☒
			☐	☐	☐	☐	☐	☐
			☐	☐	☐	☐	☐	☐
			☐	☐	☐	☐	☐	☐
			☐	☐	☐	☐	☐	☐

6. OFFENDERS/DETAINEES INVOLVED:

NAME	ID #	INJURY?	MEDICAL REQUIRED? Yes	MEDICAL REQUIRED? No	MEDICAL RECEIVED? Yes	MEDICAL RECEIVED? No
Shidon Blake	343-938	pain on left side of face	☒	☐	☒	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐

7. LEVEL OF FORCE USED: ☐ Lethal ☐ Less Lethal ☐ Less than Lethal ☒ Physical Force Only/with Instruments
(check one)

8. IMPLEMENTS OF FORCE USED
☒ Hands, Feet, Defensive Holds, etc.
☐ Firearms
☐ Chemical Agents
☐ K-9
☐ Batons
☐ Pepper Spray
☐ Pepper Ball
☐ Stun Shield
☐ Other (specify):

TYPE OF FORCE EMPLOYED:
☐ Planned/Organized team response
☒ Spontaneous Response by Officer(s)

REASON FOR FORCE USED
☐ Self-Defense/Defense of Another
☐ Effecting an Arrest (DPP)
☐ Prevention of Suicide/Self Mutilation
☐ Prevention of Escape
☐ Destruction of Property
☒ Refusal of an Order
☐ Prevention of Crime
☐ Other (specify):

9. VIDEO RECORDED? ☐ Yes ☒ No
Videographer's Name: _____

PHOTOGRAPHED? ☒ YES ☐ NO
Photographed By: Cpl. Olushola Ajasa

10. Institutional Duty Officer/Supervisor Notified? ☒ Yes ☐ No
Name of Duty Officer/Supervisor Notified:

Notified By: Major Cherie Peay

11. Describe Property Damage (Use Additional Sheets if Necessary)
n/a

12. Shift Commander's/Supervisor's Review: /s/ Major Cherie Peay (RM) 6/21/07
Signature Date

Comments:
Assigned for Investigation? ☒ Yes ☐ No Investigator: Captain Calvin Vincent

13. Security Chief's/Bureau Chief's Review: /s/ Rory L. Jones 7/1/07
Signature Date

Comments: The amount of force used was not in compliance with the DPSCS Use of Force Manual.

14. Warden's/Exec Deputy Director's Review: _____ _____
Signature Date

Comments:

[SEAL] **DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES**

INVESTIGATOR'S SUMMARY

☒ DIVISION OF CORRECTION
☐ DIVISION OF PRETRIAL DETENTION AND SERVICES
☐ DIVISION OF PAROLE AND PROBATION
☐ PATUXENT INSTITUTION

TO: Rory L. Jones, Acting Chief of Security

FROM: Captain Calvin Vincent

INCIDENT (FIRM CATEGORY):

DATE: 5-21-07 TIME: 9:50 p.m.
LOCATION: 7 Corridor

EMPLOYEE REPORTS (Attached):

1. Name:	James Madigan	Title/Rank:	Lieutenant
2. Name:	Ronald Joyner	Title/Rank	Lieutenant
3. Name:	Michael Ross	Title/Rank	Sergeant
4. Name:	Olushola Ajasa	Title/Rank	Corporal07
5. Name:		Title/Rank	

DETAINEE/OFFENDER(S) STATEMENTS (Attached):

1. Name:	Shidon Blake	I.D. Number:	343-938
2. Name:		I.D. Number:	
3. Name:		I.D. Number:	
4. Name:		I.D. Number:	
5. Name:		I.D. Number:	

WITNESS STATEMENTS (Attached):

1. NAME: Cpl. Latia Woodard
2. NAME: Cpl. Candis Fields
3. NAME: _____
4. NAME: _____
5. NAME: _____

INJURY TO STAFF:

1. Name: Michael Ross Title/Rank: Sergeant
2. Name: _____ Title/Rank _____
3. Name: _____ Title/Rank _____
4. Name: _____ Title/Rank _____
5. Name: _____ Title/Rank _____

ADMINISTRATIVE DATA CHECKLIST:

	Yes	No	N/A
Serious Incident Report:	☒	☐	☐
Use of Force Report:	☒	☐	☐
Matter of Record:	☒	☐	☐
Witness Statement(s):	☒	☐	☐
Offender's/Detainee's Statement:	☒	☐	☐
Videotape:	☐	☒	☐
Medical Evaluation:	☒	☐	☐
Investigation Report:	☒	☐	☐
OBSCIS Printout:	☒	☐	☐
Notice of Infraction:	☒	☐	☐
Photographs:	☒	☐	☐

Other: _____

I.I.U. Notified: Yes ☒ No ☐ Time, Date & Person
2127, 06-22-07, Det. Sgt. Robert Fagan

Police Report #: 07-35-00868 IC Person Contacted:
Det. Sgt. Robert Fagan of IIU

SUMMARY/RECOMMENDATIONS:

On June 21, 2007 inmate Shidon Blake 343-938 was being transferred from unit 7 Charlie cell 22 to unit 7 Bravo cell 16, the segregation unit, because of his attempt to rile inmates housed on 7-C relative to using the inmates' telephones. Earlier, inmate Blake was reported to have said to inmates, in a belligerent tone, that they, as inmates, could control who uses the inmates' telephones. Because of this, he was being placed on administrative segregation. The inmate was handcuffed from behind while being escorted by Sgt. Michael Ross and refused to allow Lt. James Madigan to take hold of him to assist Sgt. Ross in the escort by snatching away from Lt. Madigan when Lt. Madigan attempted to grab his arm. It is reported by Cpl. Candis Fields that Lt. Madigan shoved inmate Blake down the pod stairs as Sgt. Ross was escorting the inmate. Corporals Fields, Latia Woodard, Sgt. Ross and Lt. Madigan all admit that the inmate was hit in his face by Lt. Madigan though the number of strikes and the position of the strikes vary to some degree. As the scuffle entered the seventh floor corridor Officer Woodard call for assistance, via two-way radio. As the response team arrived, inmate Blake was sitting on the floor of 7 corridor, again, with his hands cuffed from behind as Sgt. Ross stood over him while Lt. Madigan looked

on. The area was deemed secured and the inmate was taken to the medical department where he was superficially examined because he refused treatment. He signed a medical waiver form. There was no apparent injury to the inmate. However, Sgt. Ross sustained contusions to his knees as a result of falling in the scuffle. Internal investigation unit was notified the following day and assigned case number 07-35-00868 IC.

Though Lt. James Madigan wrote in his report that he feared for his safety, I conclude that the risk to his safety was negligible at best. I further conclude that the situation was escalated by Lt. Madigan's rigidness not to heed the request, then demand, of the inmate as well as Sergeant Michael Ross's comment that he, Sgt. Ross, had the inmate under control. In short, the event could have been avoided. Therefore, I recommend that Lt. James Madigan receive fifteen days suspension or forfeiture of the 120 hours of annual leave and/or mandatory use of force training.

SIGNATURE: Capt. Calvin Vincent 6/21/07

[SEAL] DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
USE OF FORCE EVALUATION REPORT

☐ DIVISION OF CORRECTION
☐ DIVISION OF PRETRIAL &
DETENTION SERVICES
☐ DIVISION OF PAROLE & PROBATION
☐ PATUXENT INSTITUTION

UOF #	MRDCC	07	008
	FACILITY	YEAR	SEQUENCE #
SIR #	MRDCC	07	043
	FACILITY	YEAR	SEQUENCE #

INSTITUTION/OFFICE: MRDCC INCIDENT
DATE/TIME: 6/21/07 10:00PM AM PM

SPECIFIC LOCATION OF INCIDENT: _____

INCIDENT INFORMATION

	Yes	No
Was the level and type of force appropriate?	☐	☒

If "No," comment:

According to all reports and the investigation it was deemed Lt. James Madigan used excessive force in assisting Sgt. Michael Ross escort inmate Shidon Blake #343938 off of housing unit 7Charlie. Lt. James Madigan struck inmate Blake in the face four (4) times while inmate was handcuffed from the back.

If there was an injury, visible or complained of, to an offender/detainee, was the injury consistent with the force used? If "No," comment:	☒	☐
Was required medical evaluation completed? If "No," comment:	☒	☐
Is there documentation of an opportunity for voluntary compliance? If "No," comment:	☒	☐
Was there proper use of protective gear? If reactive use of force, mark N/A. If "No," comment:	☐	☐
N/A		
Was there proper and continuous use of the video camera in a planned use of force? If "No," comment:	☐	☐
N/A		
Was the force used consistent with policy, procedures and the Use of Force Continuum? If "No," comment:	☐	☒
According to all reports and the investigation, there was excessive force used on inmate Shidon Blake #343938		

Other Comments:

Lt. James Madigan has been placed on Administrative Leave pending termination

EXHIBIT 10

STATE OF MARYLAND
DEPARTMENT OF BUDGET & MANAGEMENT
OFFICE OF PERSONNEL
SERVICES AND BENEFITS
301 WEST PRESTON STREET
BALTIMORE, MD 21201

UNSATISFACTORY REPORT OF SERVICE

EMPLOYEE NAME: Madigan James Joseph [redacted]
(LAST) (FIRST) (MIDDLE) (Social Security No.)

CLASSIFICATION: Correctional Officer Lt.

SEPARATED FROM: **Maryland Reception Diagnostic & Classification Center 3502030004**
(Unit) (Appropriation Code)

SEPARATION WAS (check, as appropriate):

☒ Resignation ☐ Resignation Without Proper Notice

☐ Resignation in Lieu of Termination

Termination Without Prejudice

☐ Termination With Prejudice Other:

EFFECTIVE DATE OF SEPARATION 07/13/2007

Explain the need for this unsatisfactory report:
Please remove the MS106 filed 07/13/07; employee resigned effective 07/13/07.

Copy to Employee: ___ **Copy delivered in person**
X **Copy mailed to the following home address:**

[redacted]

REPORT
FILED BY: Felicia M. Hinton [FMH] Warden
(Appointing Authority) (Title)

DATE: 01/30/08

APPEAL RIGHTS: An employee may submit a written request to change an unsatisfactory report to the Department of Budget and Management, 301 West Preston Street, Baltimore, Maryland 21201, within 30 calendar days of receipt. The Secretary of Budget and Management or the Secretary's designee may modify or correct any inaccurate or incomplete information on the unsatisfactory report the appointing authority or the head of the principal unit who filed the report shall have the authority to rescind the report.

DEPARTMENT OF BUDGET AND MANAGEMENT USE ONLY

ACTION: _____ **DATE OF ACTION:** _____
EXPIRATION DATE: _____

MARYLAND POLICE AND CORRECTIONAL
TRAINING COMMISSIONS
3085 Hernwood Road Woodstock, MD 21163-1099
Voice: (410) 750-6500 Fax: (410) 203-1010

NOTICE OF PERSONNEL ACTION
MANDATED CORRECTIONAL PERSONNEL

NOTE: Information submitted to MPCTC is subject to the Public Information Act (State Gov't Art., §10-611 *et seq.*), and is not bound by agreements made by correctional units, mandated correctional personnel, or others about the confidentiality of this information.

Last Name: Madigan First Name: James MI J

Certification Number: [redacted]

Name of Agency: THE MARYLAND RECEPTION DIAGNOSTIC AND CLASSIFICATION CENTER

Date of Action: 07/13/07 Rank: CO LT.
Classification: CO X CC __ IS __ P&P Agent __ DDM __

Is the individual authorized the use of a departmental firearm: Yes x No __

FOR DPSCS TRANSFER ONLY
Use this box to indicate transfer of mandated personnel between agencies in the DPSCS.
Transfer From: _____
Transfer To: _____

Please indicate all statements which describe the personnel action taken. An explanation of the action may be attached.

1. Name Changed To: _____

2. Resignation x OR Retirement ____
   __A. General, without prejudice.
   __B. While under administrative charge or investigation.
   __C. While under criminal charge or investigation.

3. Assign to Non-Officer status:
   __A. Medical/injury, military
   __B. Department suspension due to administrative charge or investigation.
   __C. Department suspension due to criminal charge or investigation.
   __D. Other: _____

4. __Returned to active duty status from Non-Officer status.

5. __Involuntary termination of employment.

6. Promotion:
   __A. To first line supervisor (first line supervisor training required).
   __B. Over the rank of first line supervisor.
   __C. To first line administrator (first line administrator training required).

7. __Demoted.

8. __Deceased.

I certify that to the best of my knowledge the above information is accurate.

Felicia M. Hinton	Felicia M. Hinton	01 30 08
(Printed/Typed Name)	(Signature)	(Date)

State of Maryland Department of Budget and Management OPS & B 301 W. Preston St. Baltimore, Maryland 21201	**Appointing Authority** Process Date Print Date 7/16/2007 Print Time 1:52 pm	01 [Illegible] ID 052370 0	Authorized Type 01

[Illegible] Action Description and Reason Code 617 Terminated – ES – Without Prejudice	Doc Dist PY	Department Name MD RECEPTION, DIAGNOSTIC AND

Position Status	03 Employee Status	04 Class	Class Title
Filled	SS – Skilled Service	4083	CORR OFFICER LIEUTENANT
	SS – Skilled Service	4083	CORR OFFICER LIEUTENANT

05 Social Security	06 Last Name	07 First Name	08 M.I.	10 Sex	11 Birth Date	County 12 Res	13 Emp
[redacted]	MADIGAN	JAMES		M	[redacted]	[redacted]	31
[redacted]	MADIGAN	JAMES		M	[redacted]	[redacted]	31

14	15 Step	16 Salary	Sal	49	17 Pct	18 Days per pay/Pays per	19 Norm	20 Sub	21 Payroll	23
0016	014	[redacted]	M	OT	100	10-26	80.0	420	1	421
0016	014	[redacted]			100	10-26	80.0	420	1	421

24 Prev Agy Code	25 Prev PIN	26 Inc	27 Inc	28 Entry on	30 Chk Dst	31 Ret Sys	32 Date Pos Est	33 Exp Date TE/EM/CE
350203000		07	2008	7/26/1989	004	02	7/1/1980	
350203000		07	2008	7/26/1989	004	02	7/1/1980	

35 Auth Pct	36 Fund Codes	37 Funding	38 Agency Code	NOTE: Changes to boxes 35 thru 38 require Budget Approval	41 Eff Date	42 Rev
100	01 00 00	100 000 000	350203004		7/1/2007	Mass
100	01 00 00	100 000 000	350203004		7/13/2007	

39 Action Code	Last Personnel Action Taken This Position	48 Bargaining Status
97S	SALARY ADJUSTMENT AND INCREMENT	NS
617	Terminated – ES – Without Prejudi	NS

Signature of Appointing Authority	Date	Agency Prime Contact Name, Fax and Phone No.
		Mary Chambers, 410-878-4108

Program Change ☐ Fund Change ☐ Abolish Position ☐ Abolish/Create Position ☐

45 Race/Ethnic Identification: Select one or more of the following racial categories:	09 Race 015	45A Verification of this Person's possession of the minimum qualification for this
☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Hispanic or Latino ☐ Native Hawaiian or other Pacific Islander ☒ White or Caucasian		[No] Been Completed, or [No] Been initiated and will be completed prior to the end of the probationary

BUDGET & MANAGEMENT USE ONLY			DBM AUTH. SIGNATURE Date
	☐ APPROVED	B.A. Date	
	☐ DISAPPROVED	C.B.A. Date	

Classification	AUTHORIZED CODE AND TITLE	Authorizing Signature

OPS & B USE ONLY

Memorandum of File Closure

Date: January 29, 2008
Employee: James Madigan, Correctional Officer Lieutenant, (MRDCC)

1. *State Personnel and Pensions Article*, §11-105(l)(iii) Intentional conduct without justification, that seriously threatens the safety of the workplace

2. *State Personnel and Pensions Article*, §11-105(8) Wantonly careless conduct or unwarranted excessive use of force in the treatment of an individual who is a client, patient, or prisoner, or any other individual who is in the care or custody of the State.

3. *COMAR* 17.04.05.04B(1) Being negligent in the performance of duties;

4. *COMAR* 17.04.04.05B(2) Engaging in intentional misconduct, without justification, which injures another person, causes damage to property, or threatens the safety of the workplace;

5. *COMAR* 17.04.04.05B(3) Being guilty of conduct that has brought or if publicized, would bring the State into disrepute;

6. *COMAR* 17.04.04,05B(4) Being unjustifiably offensive in the employee's conduct toward fellow employee's, wards of the State, or the public;

7 *COMAR* 17.04.05.04B(10) Willfully making a false statement or report;

8. *COMAR* 17.04.04.05B(12) Violating a lawful order or failing to obey a lawful order given by a

superior, or engaging in conduct violating a lawful order, which amounts to insubordination;

9. DPSCS *Standards of Conduct*, Section II. B. Personal Conduct;

10. DPSCS *Standards of Conduct*, Section II. J. Performance of Duties;

11. DPSCS *Standards of Conduct*, Section II. K. Insubordination;

12. DPSCS *Standards of Conduct*, Section II.S Reports;

13. DPSCS *Standards of Conduct*, II.M. Breach of Security;

14. DPSCS *Standards of Conduct*, II.X. Attitude toward Inmates and Clients;

15. DPSCS *Standards of Conduct*, II.Y. Use of Force

16. DPSCS *Standards of Conduct*, IV.E.2.a.(9) Insubordination;

17. DPSCS *Standards of Conduct*, Section IV.E.2.a.(14) Filing a false report;

18. DPSCS *Standards of Conduct*, Section IV. E. 2. a (15) Directing cruel or harsh treatment (not resulting in harm) towards inmates;

19. DPSCS *Standards of Conduct*, Section IV.E. 3. a 7 Use of force which could reasonably be expected to result in serious bodily harm or death;

20. DPSCS *Standards of Conduct*, Section IV.H.1. Exceptional Information;

Correctional Officer Lieutenant James Madigan made a determination to "Resign from the Department of Public Safety and Correctional Services" effective *July 13, 2007*.

***NOTICE TO PERSONNEL OFFICER:* In order to protect this resigning employee and the Department, you are requested to execute the following services:**

1. Provide a neutral reference – consisting of the position, classification, and dates of employment to all prospective Employers, outside of the DPSCS.

2. Purge the above listed charges and any reports, memoranda, etc. related to this incident, from his personnel file in accordance with *SPP* § 11-109(f), in seven work days from the date of receipt.

3. Upon receipt of any request from a potential employer to review the personnel file, temporarily remove the Settlement Agreement from the file. After the examination of the personnel file, return the Settlement Agreement.

4. After the Personnel Officer has effectively removed any indications of a "TERMINATION," from the employee's file and put in place the process to offer item number one (1.) he/she shall immediately fax this sheet back to Hearing Officer

---

~~25~~ 13 [KK] July 2007

To: Felicia M. Hunton, Warden
From: James J. Madigan, Lieutenant-3-11 Shift
Subject: Letter of Resignation

Ma'am:

This is to inform you that I resign from my state of Maryland position as of the above date.

Respectfully submitted,

/s/ James Joseph Madigan

James Joseph Madigan

Approved

/s/ Warden Felicia M. Hinton

1/29/08

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

DISCIPLINARY ACTION SETTLEMENT AGREEMENT

The Department of Public Safety and Correctional Services (hereinafter, DPSCS), by and through its representative, Katherine Kennedy, and DPSCS employee, James Madigan do hereby agree to a settlement of Mr. Madigan's termination, as follows:

Mr. Madigan was charged with violating *State Personnel and Pensions Article*, COMAR and the *Standards of Conduct*, for "engaging in intentional

misconduct, without justification, that seriously threatens the safety of the workplace; wantonly careless conduct in the care and custody of an inmate and excessive use of force which could reasonably be expected to result in serious bodily harm or death"

The Employee and DPSCS acknowledge that DPSCS has the absolute right to impose a disciplinary sanction for the alleged misconduct/performance issue(s). The Employee and DPSCS also acknowledge that the Employee has the absolute right to pursue his appeal to the Office of the Secretary of DPSCS, Office of Personnel Services and Benefits, with the Department of Budget and Management ("DBM"), and have a hearing on the merits of his appeal at the Maryland Office of Administrative Hearings ("OAH"). At a hearing on the merits, DPSCS would have the burden of proving by a preponderance of the evidence that the Employee committed the acts alleged.

Pursuant to the provisions of Md. Code Ann., *State Personnel and Pensions Article* § 11-108(c), the Employee and DPSCS hereby agree to a settlement of his termination. As a settlement, DPSCS agrees to accept Mr. Madigan's resignation. Employee agrees to submit his resignation effective July 13, 2007 Employee agrees to submit his resignation to Warden Felicia Hinton. Employee agrees to waive his right to grieve the resignation.

DPSCS agrees to provide neutral references to all potential employers outside of DPSCS, full disclosure will be provided within DPSCS and the MS-106 will

be amended to reflect that Employee resigned. Employee agrees not to apply for any position within DPSCS.

If either party breaches any portion of this agreement, the non-breaching party may void this entire agreement. In the event that the Employee breaches the agreement, DPSCS reserves the right to reinstate the original disciplinary sanction of termination and the Employee's right to appeal the termination shall be considered waived. In the event that DPSCS breaches the agreement, the Employee reserves the right to pursue his appeal of the original disciplinary sanction and DPSCS' right to raise the issue of the timeliness of the appeal shall be considered waived.

Additionally, the parties intend the contents of this document to be the complete and final expression of their agreement to settle James Madigan's disciplinary sanction. Accordingly, this agreement is FINAL, BINDING, AND NOT SUBJECT TO APPEAL.

I HAVE HAD THE OPPORTUNITY TO CONSULT WITH THE COUNSEL/REPRESENTATIVE OF MY CHOICE REGARDING THIS SETTLEMENT AGREEMENT. I HAVE READ THIS AGREEMENT AND ENTER INTO IT FREELY AND VOLUNTARILY. WITHOUT PROMISES OR INDUCEMENTS OF ANY KIND EXCEPT THOSE CONTAINED IN THE AGREEMENT ITSELF.

/s/ James Joseph Madigan EMPLOYEE	1-28-08 DATE
/s/ Kathleen Kenealy EMPLOYER REPRESENTATIVE FOR DPSCS	1/28/08 DATE
/s/ [Illegible] WITNESS	1/28/08 DATE

cc. Warden Felicia Hinton
MRDCC Personnel
ERU

EXHIBIT 12

[SEAL] **Department of Public Safety and Correctional Services**

Internal Investigative Unit
P.O. BOX 410 • 8510 CORRIDOR ROAD • SUITE 100 •
SAVAGE, MARYLAND 20763-0418 •
www.dpscs.state.md.us
GENERAL BUSINESS (410) 724-5720 • FAX (410) 724-2084 • COMPLAINT REPORTING (410) 724-5742 • FAX (410) 724-2008

Date: 6/22/09 **IIU Case No.** 07-35-00868

I, Shidon Blake 343938 have been involved in an
(Full name & DOC Number)

incident that was reported to the Department of Public Safety and Correctional Services

Internal Investigative Unit. I am now requesting that no investigation be conducted. By signing this statement, I am requesting that no further investigative action be taken on this complaint and that the matter be considered CLOSED. This statement is being signed freely and voluntarily with no threat or coercion being used against me to sign this statement.

Signed: /s/ Shaidon Blake 343938

Date: 9-26-08

Witness: John Iheoma
(DPSCS-IIU Investigator)

Witness: D.T. Thomas LT 9-26-08

NORTH BRANCH CORRECTIONAL INSTITUTION
Intelligence Department
14100 McMullen Highway, SW
Cumberland, MD 21502

facsimile transmittal

To: Detective Sgt. John Iheoma Fax: [redacted]

From: Lt. D.T. Thomas-Intel, NBCI Date: 09-26-08

Re: Shidon Blake #343938 Pages: 2

CC: CASE # 07-35-00868

☐ Urgent ☒ For Review ☐ Please Comment
☐ Please Reply ☐ Please Recycle

Notes: John,

Here is the Faxed copy. I will mail you the original. Thanks.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

SHAIDON BLAKE, aka SHAMVOY SMITH, Plaintiff, v. GARY MAYNARD, et al., Defendants	Civil Action No. AW-09-2367 Greenbelt, Maryland Friday, November 2, 2012 4 o'clock p.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE
ALEXANDER WILLIAMS, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:
SCOTT A. CLAFFEE, ESQ.
Mayer Brown, LLP
1999 K Street, N.W.
Washington, D.C. 20006

FOR DEFENDANT ROSS:
DORIANNE AVERY MELOY, ESQ.
Office of the Attorney General
200 St. Paul Place
Baltimore, Maryland 21202

FOR DEFENDANT MADIGAN:
DOUGLAS T. SACHSE, ESQ.
606 Baltimore Avenue, Suite 402
Towson, Maryland 21204

[2] PROCEEDINGS

THE DEPUTY CLERK: The matter now pending before this court is civil action number AW-2009-2367, Shaidon Blake v. Gary Maynard, et al. The matter now comes before this court for a motions hearing. Parties please identify yourselves for the record.

MR. CLAFFEE: Scott Claffee of Mayer Brown, LLP, for plaintiff Shaidon Blake.

THE COURT: All right.

MS. MELOY: Dorianne Meloy for the Office of Attorney General on behalf of defendant Ross.

THE COURT: All right.

MR. SACHSE: Your Honor, Douglas Sachse on behalf of defendant Madigan.

THE COURT: All right. Mr. Claffee, it's your motion. I thought you raised some interesting issues and I thought that we would set it in for a hearing and give you a chance to tell me where we've erred. We're going to hear you and we'll let the other parties come back and then we'll see what we're going to do with it.

MR. CLAFFEE: Thank you, Your Honor.

Good afternoon. May it please the court. We are here on our motion for reconsideration of Your Honor's memorandum opinion granting summary judgment to defendant Ross. There are three issues with the opinion, respectfully, that we think [3] warrant reconsideration as either errors of law or to prevent manifest injustice. The first is the court's dismissal of defendant Madigan. The second is the ruling that the IGO process was an available remedy that Blake had to exhaust. And the third is the denial of our motion to strike the exhaustion defense in light of the prejudice that has resulted in the related issue of whether if our motion to strike is denied Your Honor should stay or equitably toll this case while Blake proceeds to exhaust the IGO process.

Now, with respect to the first issue of defendant Madigan, we believe it was a mistake to close the entire case, including Blake's claims against defendant Madigan, who is probably the most egregious offender in the original incident giving rise to this case. Madigan did not move for summary judgment and has not filed any papers addressing any of the issues decided in Your Honor's memorandum.

We submit, then, that it was inappropriate to close the case against him for that reason alone. Because Madigan has never raised the exhaustion defense, Blake has never addressed it with respect to Madigan and we believe such a defense is unavailable to him and would likely fail, in any event.

Blake is prepared to proceed to trial against defendant Madigan or if the court decides to stay the case against Ross so that Blake can exhaust, we would agree to a stay also against Madigan so that the two trials could be combined.

[4] With respect to exhaustion of the IGO process, we think there are two interpretations of the interplay between the IGO process and the ARP process, but Blake believes that he wouldn't have to exhaust under either interpretation. The first is that the IGO process is completely separate from the ARP process and that the ARP process is the only process that prisoners in Maryland should have to exhaust.

THE COURT: And what is that process? Just again walk me through that, because I'm not quite familiar. What is that process?

MR. CLAFFEE: Sure. The Administrative Remedy Process is the process that is defined by the state of Maryland as the process for resolving complaints and grievances that arise within the Division of Corrections, and then the state set up the IGO process as a completely separate agency from the Division of Corrections. So, we think that if you read the Supreme Court's decision in Jones that says its up to the state and the prison system to define what administrative remedy procedures are available, here Maryland set up the ARP process. They defined it in the materials that they make available to inmates in the handbook and in the Division of Corrections directives as that ARP process.

THE COURT: And what does that require the aggrieved party to do in the handbook –

MR. CLAFFEE: In the handbook it requires –

[5] THE COURT: – that's relevant to these facts?

MR. CLAFFEE: Okay. Sure. Well, in these facts we don't believe that Mr. Blake would have to proceed through that process at all because if –

THE COURT: Going to the warden? He didn't have to go to the warden?

MR. CLAFFEE: No. Because it was the subject of an internal investigation by the IIU unit, we believe that he would not have been able to even file a grievance under the ARP process and proceed to the warden or the appeal to headquarters.

THE COURT: And what is your authority for saying that that particular process is independent and also obviates the need for the aggrieved party to go through the handbook process? What's your authority?

MR. CLAFFEE: The authority that the internal investigation –

THE COURT: Yes.

MR. CLAFFEE: – prevents – the authority for that –

THE COURT: Or waives or gives up or excuses. Yes.

MR. CLAFFEE: Sure. The authority for that is both in this court's opinion in Thomas, relying on, I believe it was, Davis in a footnote in that case.

THE COURT: These are unreported decisions?

MR. CLAFFEE: Yes, that's correct. And, in addition, I believe there's – although not at the time, it is now written [6] into the directives that – I'm sorry. One second, Your Honor. I believe under the 2008 version of the directives now but not the version that applied to Mr. Blake –

THE COURT: And the 2008 version I inadvertently cited as –

MR. CLAFFEE: Correct.

THE COURT: – applying at that time, that was not in existence at the time?

MR. CLAFFEE: No, it was not at the time.

THE COURT: What was in existence? The handbook?

MR. CLAFFEE: The handbook was in existence and the 1993 version of the directives as well as a 2005 directive that I believe counsel for defendant Ross plans to bring to your attention, but –

THE COURT: And what did that suggest or what did that say about exhaustion on these issues?

MR. CLAFFEE: They're really, Your Honor, silent. Neither the '93 version of DCD 185-205 or the 2005 version of DCD 185-002, they are both silent on the internal investigation process entirely.

THE COURT: Okay.

MR. CLAFFEE: So, to go back, we believe that by Maryland establishing the ARP process and setting up the IGO as a separate agency, all of the materials such as the handbook and the directives, they talk about the IGO process almost akin to [7] filing a court case following the exhaustion of the ARP process. So, we believe that you can interpret how Maryland defines the ARP process as that being the administrative remedies that are required to be exhausted under the PLRA.

THE COURT: Are there any other circuits – not the Fourth Circuit but any other circuits that have addressed any of this at all?

MR. CLAFFEE: Frankly, Your Honor, I don't believe so, and it's my understanding that having a separate agency to receive inmate grievances such as the IGO in Maryland is sort of a unique situation. I believe Maryland may be – I can't say for sure but may be one of the only states that has it set up like that with a separate agency not within the overall umbrella of the Division of Corrections.

THE COURT: And the Fourth Circuit has not addressed this specifically?

MR. CLAFFEE: That's correct.

THE COURT: All right. And so, you're arguing essentially your interpretation and your belief that it's a separate vehicle and also the unreported decisions that you have brought to my attention?

MR. CLAFFEE: That's correct. And that's just the one interpretation. We believe there is another interpretation, and this is reflected in Your Honor's opinion that the IGO could possibly be part of the overall administrative remedy process. [8] But if that's the case, all of the materials, the handbook and these directives, they all talk about the IGO process as an appellate step within the ARP process to be completed only after the ARP process has been exhausted, including all the way up to a headquarters appeal of the warden's decision.

So, in Blake's case, he could not have gone through that process because the internal investigation, again, took that out of the normal ARP complaint, appeal to the warden, appeal of the warden's decision to the headquarters, that process.

So, we would submit, then, that if Blake couldn't have gone through the ARP process, he couldn't have gone through the IGO because the IGO is set up only for appeals from the ARP process in these types of cases. There are some instances where you can go

directly to the IGO, but those are limited to – counsel for Ross cited some in his motion for summary judgment – things like case management actions and things like that. If its a use of force issue, its ARP first or internal investigation that takes it out of ARP, but you can't go right to the IGO.

THE COURT: All right.

MR. CLAFFEE: So, regardless of how Your Honor thinks the IGO and ARP regulations should be interpreted, Your Honor can avoid sort of weighing in on that by finding that Ross waived his exhaustion defense. I understand that Blake's [9] prejudice argument was found lacking at the time Your Honor decided his motion to strike but now that the court has also ruled against Mr. Blake on summary judgment, the prejudice here is obvious because Blake will be unable to refile his complaint even if he goes and exhausts the IGO process due to the statute of limitations unless the court stays the action or rules that there should be an equitable tolling of the statute.

THE COURT: All right. Let me follow up on that. You're suggesting that this court stay the action as to Ross while you pursue what?

MR. CLAFFEE: If the court's ruling stands that Blake failed to exhaust because he didn't go through the IGO process, Blake would file a grievance with the IGO office. In fact, Blake already did file a grievance with the IGO office back in June following Your Honor's order.

THE COURT: June of this year?

MR. CLAFFEE: June of this year. That's correct.

THE COURT: So, one has been filed?

MR. CLAFFEE: One has been filed and –

THE COURT: What has happened to it?

MR. CLAFFEE: It has been dismissed without prejudice pending the resolution of our –

THE COURT: This motion for reconsideration?

MR. CLAFFEE: – motion for reconsideration. Exactly. I've spoken with the director and our understanding is that he [10] wanted to wait and see – if Your Honor reconsiders the ruling on whether the IGO process was even necessary, that would moot the grievance, and if Your Honor's decision stands, then he will reopen the grievance that we filed in June and we expect it would be administratively dismissed rather quickly and we could come right back here before Your Honor if the case was stayed during that brief process.

So, just briefly to address the prejudice, to remind Your Honor of the time line, this incident took place in June 2007 The IIU closed their internal investigation – it wasn't completely closed until September 2008. Blake filed his complaint in September 2009. So, it was a bit over two years after the

incident but still well within the three-year statute of limitations.

Now, defendant Ross filed an answer right after the complaint was filed in November of 2009 and filed a motion to dismiss or for summary judgment that February, February 2010. In neither of those, the answer or the first dispositive motion, did Ross raise the exhaustion defense and to date has still not explained why not, despite the fact that the state had all of the information relevant to whether or not an exhaustion defense applied at the time of that answer and motion.

THE COURT: Well, at some point wasn't there a consent?

MR. CLAFFEE: I'm sorry?

THE COURT: At some point wasn't there a consent by the [11] plaintiff to permit such an amended defense?

MR. CLAFFEE: Much later, Your Honor. And we would argue there wasn't consent to the filing of this particular defense. In fact, we consented to the amendment of an answer, but we were never shown a draft answer and we were not given any indication that additional dispositive defenses were going to be raised in that answer.

And I do want to briefly mention that – Your Honor mentioned that the appropriate way for Blake to have proceeded in that case would have been to file a partial opposition to the consent motion, but I

wanted to just point out that Your Honor granted that motion to file the amended answer the next day after it was filed. So, after receiving the amended answer and seeing that that defense was in there, Blake wouldn't have had any time to file a partial opposition anyway because the motion had already been granted. So, we believe the only proper – the only avenue available to Blake at that point was to file the motion to strike, which we did within the 21-day time limit provided by the federal rules.

So, going quickly back to the time line, if Ross had raised the exhaustion defense either in the answer or in his first motion in February 2010 and the court had ruled on it at that time, Blake still could have gone and exhausted and refiled his complaint prior to the expiration of the statute of limitations in the summer of 2010. So, Ross makes a big deal [12] out of the fact that it was Blake's own inaction that caused this prejudice but, really, the only thing that caused the prejudice that were talking about now, which is the fact that Blake wouldn't be able to refile due to the statute of limitations, is the fact that Ross waited until after the expiration of the statute of limitations to even raise the exhaustion defense. That's the only reason why this is an issue right now.

So, in order to prevent what we see as this grave injustice and allow Blake to have his day in court against both defendants Ross and Madigan, we think that Your Honor could either stay the case or rule that the statute of limitations should be tolled while

Blake goes and completes the exhaustion if Your Honor finds the IGO process necessary to exhaust. As I said, the IGO would reopen the grievance that we filed in June. We think it would be administratively dismissed rather quickly and we could be right back in front of Your Honor to either relitigate the merits of defendant Ross's summary judgment motion or proceed to trial, discovery having been closed in this case, and we are prepared to go to trial against both defendants Ross and Madigan if Your Honor sees that appropriate.

THE COURT: All right.

MR. CLAFFEE: Thank you, Your Honor.

THE COURT: Thank you. All right. We'll hear from Ms. Meloy. Ms. Meloy, how are you? I haven't seen you in a [13] while.

MS. MELOY: I'm fine. I just joined the AG's office about 11 weeks ago from Prince George's County.

THE COURT: Isn't that something? Yes. All right. Great.

MS. MELOY: So, its nice to be here.

Your Honor, I've been in this case about 15 days. So, I have spent quite a bit of that time trying to familiarize myself with the case and provide a response to the court. So, I'd ask the court to bear with me a little bit due to the brief period of time that I have been involved.

First of all, plaintiff has failed to meet its burden to the court that that Rule 59(e) standard has been met in this case. There was no clear error of the law in the court's ruling and there is no manifest injustice in this matter. There certainly is no intervening change and controlling of law in this case.

First I'd like to address with the court the issue of the motion to strike because that sort of puts us procedurally before the court on the issue of the failure to exhaust.

As the court noted, the amended answer was timely filed and, pursuant to Young v. City of Mount Rainier, that amended answer was appropriate.

I'd also like to point out to the court in reviewing the file that at the time that a discussion was had on the [14] earlier complaint, the first complaint that is no longer viable before this court, and that consent motion to leave to amend the defendant's answers, the e-mail that was attached to the pleading in that case indicated – and that is, I believe, document 78 before the court – that counsel got a quid pro quo by consenting to that amended answer and that was that he would have the ability to file without objection an amended complaint. So, when we sort of look at the overall fairness, that amended answer isn't even viable or controlling in this case. But if it were, Mr. Blake, in fact, got a benefit from that consent that he gave.

Further, counsel has cited a matter before the court indicating that if the – asserting that his

amended complaint didn't change the theory or scope of the case against Ross, and that simply is not accurate. The plaintiff's amended complaint at document 78-1, in fact, added some very specific claims against defendant Ross at paragraph 4. It added the words "Over an extended period of time" in front of what had previously been "Sergeant Ross made no attempts to stop the attack." It added "despite my repeated pleas for assistance" in front of what had previously been "The officer assigned to Hall called the officer's assistance." It then added for the first time "Sergeant Ross and Lieutenant Madigan took me to the ground in a violent manner. Sergeant Ross acted with callous and reckless disregard for my rights."

[15] He also added at paragraph 6 that he's stating to hold Sergeant Michael Ross and James Madison responsible for his injuries.

Having had an opportunity to review the complaint and to review some of the depositions in this matter, the theory against Sergeant Ross is one either of actual affirmative action when Mr. Blake was taken to the ground and for the first time that is alleged in the amended complaint and what had previously been alleged was insufficient to withstand a motion for failure to state a claim in support of an act on Sergeant Ross's part as a failure to intervene in behalf of what actions Officer Madigan took or Lieutenant Madigan took and that you have to be aware a constitutional violation is occurring and you have to have sufficient and adequate time to be able

to act to stop the harm. So, it did change the theory and scope of the case significantly in terms of Ross's liability in this matter.

So, for that reason as well, the amended answer and the amended complaint are the viable ones before the court and they were timely. Therefore, the affirmative defense of exhaustion was properly raised before the court at that time.

THE COURT: Again, what's bothering me a little bit is that it just seems that the defense could have or should have anticipated raising such a defense much earlier than that. It seems to me one of the defenses that people should quickly throw in whether its applicable or not, and this thing came kind of [16] late in the game despite the amended complaint, which, in a sense, since it was late, it did then prevent me from causing the plaintiff to go back and exhaust because, again, the statute had run or was about to run.

So, I'm a little concerned about what appears to be a little unfairness, because I could have ruled very quickly as to whether it was viable or not and so forth.

That's what's concerning me right now. What do you have to say about that, Ms. Meloy?

MS. MELOY: Well, Your Honor, I was not counsel previous to 15 days ago in this case.

THE COURT: All right.

MS. MELOY: When Ms. Rice became counsel in this matter and reviewed the file, she ultimately made contact with counsel to file that amended complaint or amended answer and got consents back, and the plaintiff in this case by that got an agreement by our office on behalf of Mr. Ross to be able to amend his complaint. His complaint would not have withstood scrutiny for a motion for summary judgment or at the end of trial and Officer Ross would have also been prejudiced by an amended complaint that late in the game. So, counsel has – through Mr. Blake has waived that argument and also received a benefit.

In addition, there is ample case law cited – and I would ask to adopt our earlier leadings and motions – that [17] allow for the raising of an affirmative defense either at motion for summary judgment or on the court's own motion, and it was very clear that there was this issue of whether or not something is sue sponte versus on the court's own motion, and it can be raised on the court's own motion. So the plaintiff in this case, Mr. Blake, was always in jeopardy from the day he filed his complaint until the court ruled on exhaustion that that issue would in fact be raised either through the defendant or through the court itself.

The court should not have to put the time and effort and resources into a trial nor the defendant stand for a trial in the event of a case that should not go forward, and a failure to exhaust is required of the plaintiff in these cases.

In addition, what it talks about is is there an unfair prejudice or are there extraordinary circumstances outside of the defendant's external control, external to the defendant, outside of his control that would allow equitable tolling. It was always in this defendant's control to choose to go forward on an exhaustion remedy and to exhaust that claim at any time prior to filing suit and any time prior to the statute of limitations. To now allow the case to be equitably tolled by the inaction of the plaintiff leads defendants and correctional officers at the whim of every inmate to choose not to exhaust and hope that the court will excuse their own inaction and neglect. There is nothing in this case whatsoever that [18] indicates that the prison officials or the defendant Ross in any way thwarted or attempted to keep Mr. Blake, the plaintiff, from pursuing his remedy, his exhaustion, his remedy through the prison system in this matter. It was simply his choice not to go forward.

So, looking at the failure to exhaust issue, first I would like to provide to the court Defendant's Exhibit No. 1. It's previously been provided to counsel in this matter.

THE COURT: All right.

MS. MELOY: If I may approach.

THE COURT: Give it to the clerk. Yes, that will be fine.

MS. MELOY: One of the issues raised in counsel's motion for reconsideration is that the court relied on the 2008 DCDs and that they were not in effect at the time that this incident occurred. This was clearly – the DCDs that were provided in the motion for summary judgment were known to plaintiff and that was not raised in their opposition. It was not raised until the court granted the motion for summary judgment and in a footnote, page, I believe, 6 of their motion for reconsideration. But the February 15, 2005, DCD that is an established policy of their operation, management and administrative remedy procedures at – and the one that was in effect at the time of this incident of June 21, 2007, specifically says at number R, "If an inmate initially submits a [19] complaint that is subject to this procedure to the Inmate Grievance Office, that office may either require the inmate to exhaust the Administrative Remedy Procedure or accept the grievance," clear, straightforward language that the IGO had the ability to hear this case and the plaintiff made no effort to go forward.

Also, the IGO, in fact, can hear use of force cases directly. Also, counsel in his motion admits and has already conceded to this court that the 1993 directives that were in place at the time as well as the 2005 directive that has been provided to the court makes no mention whatsoever of the IIU process.

The 2008 DCDs, which were not in effect at the time, have a specific ability to have an Administrative Remedy Procedure. There's what's called an ARP,

A-R-P, Administrative Remedy Procedure, and the IGO, the Inmate Grievance Office. They are both available remedies for a – procedures and processes for an inmate to bring a complaint against a DOC employee or a Patuxent employee to the prison's attention, to management.

So, in 2007 when he was required to begin his procedure for bringing this to the attention either of IGO or the attention through an ARP, there was no prohibition listed that indicated that the inmate would be unable to pursue that when an IIU investigation was pending. That was actually added on [20] August 8th of 2008. So, there's really before the court, as Ms. Rice had argued in her motion for summary judgment, two bases on June 21st of 2007 to exhaust, to bring to the prison's attention your complaint and for exhaustion, one being the three-step process of filing an ARP, having it reviewed by the warden, by the commissioner, and then the IGO on appeal, or directly to the IGO as a case of first impression.

The inmate in this case did none of that. As the court in its own opinion cited in our response has found, the mere existence of an internal affairs investigation does not relieve the plaintiff in any way of his duty and obligation to file that administrative remedy. An internal investigation is really a personnel action, a potential review by the prison to determine whether or not personnel matters have been violated and to manage the prison. The grievance process is an opportunity for the inmate himself to bring a matter forward to the prison.

This concept that IGO is not part of a remedy or a complaint process or grievance process for the plaintiff is just to try to obscure the court from the issue. The federal courts have said that we look to the prison system, to the state, to determine how individuals are to seek remedies, and in the state of Maryland we have given two manners in which that can happen. The Inmate Grievance Office is a part of the Department of Public Safety and Correctional Services as well as the Department of Corrections being under the Department of Public [21] Service and Correctional Services. Within the larger umbrella of the state having within its correctional system an opportunity for inmates to be heard, we have both available to them and they must avail themselves of that remedy. So, ultimately for someone to be able to grieve a case, they ultimately have to end up at the Inmate Grievance Office either as a direct case or through the ARP process as the third step.

In addition, the inmates have available to them – and I'm sorry. I need to have this marked as the second exhibit. This is Administrative Remedy Procedure 185-201 and in it it establishes the procedure for inmate awareness of access to the Administrative Procedure Remedy and it tells the inmates if they have any questions regarding the instructions or time frames of the Administrative Remedy Procedure, they should review the Division of Corrections directives or contact the institutional administrative remedy coordinator, and those directives are available in the prison library.

THE COURT: All right. I'll take that. Its Defense 2?

MS. MELOY: Exhibit 2 for defendant Ross.

THE COURT: All right.

MS. MELOY: Therefore, the inmate handbook is not the sole means of information for the plaintiff Blake in this case as well as the COMAR regulations and the Correctional Services article, and the statutory references are also available in the [22] library. The inmate cannot simply feign ignorance or lack of due diligence in pursuing his rights.

Therefore, the court's opinion, whether you do it under the 2005 and 1993 directives or the 2008 directives, has the appropriate outcome, which is that the plaintiff in this case failed to exhaust and, in fact, the 2005 one is even a stronger statement for this court that the inmate clearly knew and had available to him the remedy of the IGO.

In regards to the request to stay, in the case of Boeing v. Horning, which is cited in our response, the court does not have the authority to stay this matter in a PLRA case. The court must dismiss. Plaintiff has not cited one case to the court in its memorandum that is controlling on this court that is a PLRA case that allows the case to be stayed.

So, that leaves us to address with the court the further issue of equitable tolling. The Fourth Circuit has not pronounced its opinion in this matter. I have not found a controlling case. Counsel for Blake has

not cited to the court and also has indicated in its motion that the Fourth Circuit has not yet spoken on this matter.

If the court takes the position that equitable tolling is available in PLRA cases, then the court needs to look at the circumstances and when it should be used. It is the rare circumstance in which it should be used. Equitable tolling generally requires that there be an extraordinary circumstance [23] that prevented the filing and that extraordinary circumstance – rare – is something that is external and beyond the control of the plaintiff and that the plaintiff must have pursued his rights diligently.

In this case the plaintiff failed to act and the only reason he gave for failing to act is that there was an IIU investigation. Clearly he had the ability to go forward with this case and no one from the prison in any way indicated to him – there's no evidence that they thwarted that. He never filed anything. He never received a document back that said "IIU investigation. Case dismissed procedurally." And certainly what we've shown the court now is that in 2007 there were no directives that spoke to that issue. It was only a directive in August of 2008 in terms of the ARP three-step process that speaks to that, and still today under the IGO process a direct complaint could go forward on use of force without an IIU investigation prohibiting it by directive or statute.

So, it would be – there may be prejudice to the plaintiff in that the statute of limitations has run, but

the court has to find its unfair and that its not as a result of the plaintiff's actions, that it was external to him, and the defendants in no way caused that to occur, and to allow him now after the statute of limitations has run – and if you look at the cases that were cited by counsel in their brief, they [24] basically dealt with where equitable tolling was allowed and there were circumstances in which the plaintiff in some way had been delayed from being able to complete his grievance by some act of the prison. There was the Rivera case, Johnson v. Rivera, where the allegation was that the prison guard tore up and threw away the grievance – that's not the case here – that they had, in fact, started the process of the grievance prior to the tolling of the statute of limitations but had not completed it and then the court at that point equitably tolled until the completion of that process.

Therefore, the court should not allow equitable tolling in this case or basically the court has opened the floodgates for every inmate housed in the state of Maryland to come forward to this court and not exhaust and then once the issue is before the court, which was always a viable issue before this court not only through an affirmative defense raised by the plaintiff but through the court's own motion, that they could then go back and say, well, I want to exhaust, and leaving the defendants at a disadvantage as well.

The last issue I would like to discuss with the court is the issue of whether or not exhaustion is

available to Madigan, and I'm not asserting this as a defense on behalf of Mr. Madigan, I do not represent him. Counsel is here. But there was what I saw as a broader policy issue for the Office of Attorney General in representing correctional officers in this [25] matter, which is there is absolutely no authority cited by counsel that says that once someone resigns after 30 years of service with the state of Maryland, retires, goes out on disability retirement because they're injured within the prison setting or is terminated that the failure to exhaust defense would no longer exist for that individual.

The cases that they cited that dealt with when you look at the time of filing as to whether someone is a prisoner or not and has to exhaust deal with the prisoner status. They do not deal with the status of whether or not within the procedural remedies and complaints process that it has to have been a Department of Corrections official or Patuxent official or employee that they're alleging caused some complaint or harm. And so, for the broader policy issue, we wanted to address that with the court, that that is not a correct statement of the law and unsupported by any citation.

Thank you, Your Honor.

THE COURT: All right. Let's hear from Mr. Sachse.

MR. SACHSE: Your Honor, Douglas Sachse on behalf of defendant Madigan.

Your Honor, I'll be very brief. I know you pr ba-bly have noted in this file that we did not file certain responses to the motion for reconsideration. We did not file a motion for summary judgment.

I am here to argue briefly – well, first of all, to [26] say that defendant Madigan would adopt the arguments made by Ms. Meloy and the Attorney General's office with regard to exhaustion and the fact that defendant Madigan subsequently as part of an agreement resigned as a lieutenant for the state.

The only other thing that I wanted to bring forward to Your Honor is that the question of – there's no question but that the PLRA requires exhaustion. I think everybody agrees to that. And I think its become very clear that plaintiff Blake failed to meet that. He did not exhaust his administrative remedies. His failure to do so then raised the issue that because of the PLRA and its requirement, can the court do anything about that, and in this case the court did on its own dismiss the complaint as to Madigan. That is acceptable. That is permissible. But the plaintiff has to have an opportunity to argue that before its dismissed as to defendant Madigan. I would submit, Your Honor, that –

THE COURT: And plaintiff didn't get an opportunity, did he?

MR. SACHSE: Well, that's where I'm going. I understand what Your Honor is saying. But if you go back through the record in this case, you'll see that in the various motions to strike the affirmative defense

raised by defendant Ross as to exhaustion of administrative remedies, the issue was attacked and addressed on several occasions, including in the motion for summary judgment and the reconsideration of the [27] motion for summary judgment and today as to whether or not that applies to this case, and if it does apply to this case, it applies to Madigan, but if it applies to Madigan, which it would, then he, too, should be dismissed. Again –

THE COURT: Isn't that defense waivable, exhaustion?

MR. SACHSE: I think that in my reading of the cases – I will say this, that that defense is possibly waivable by the time you go to trial, yes. But in this case it was fully argued and the court still has the right on its own to dismiss if there was a failure to exhaust as long as the plaintiff has been given an opportunity to make arguments against that.

This issue, as the court I'm sure is aware now through the pleadings and what has been argued here today, has addressed this issue fairly carefully and the plaintiff has had every opportunity to attack and to question whether the plaintiff did, in fact, exhaust administrative remedies.

So, I think it was appropriate for the court to do what it did. The court had the authority to dismiss with regard to Madigan and I would ask the court to uphold that dismissal with regard to defendant Madigan as well as defendant Ross, Your Honor.

THE COURT: All right.

MR. SACHSE: Thank you.

THE COURT: Mr. Claffee, you have the last word. Its your motion.

[28] MR. CLAFFEE: Very briefly, Your Honor. I'll start briefly with the issue with respect to defendant Madigan. Plaintiff Blake did not have an opportunity to address the defense of failure to exhaust with respect to defendant Madigan and, frankly, that should end the issue. The fact that exhaustion has been briefed with respect to defendant Ross should not apply equally to Madigan because the arguments, frankly, would be different. A lot of the argument and discussion with respect to defendant Ross and whether or not the defense should be stricken revolves around the procedural issues of amended complaints and amended answers and waiver and all of this. Defendant Madigan never raised it, not in any responsive pleading, not in a response to the amended complaint, not even in a motion for summary judgment. Until today I had no notice that defendant Madigan even anticipated raising failure to exhaust.

So, I would argue that in terms of the waiver issue, our arguments would be even stronger with respect to defendant Madigan if, in fact, we were to address those arguments. And, of course, the prejudice involved in the fact that it would dispose of the entire case without an opportunity for Blake to refile are equally applicable to defendant Madigan as they are to defendant Ross.

But speaking to defendant Ross's arguments with respect to the amended complaint and amended answer, I believe counsel [29] referred to it as sort of a quid pro quo. I am sympathetic to counsel's statements to the effect that she is new to this case and former counsel, Ms. Rice, was also new to this case and discovered this exhaustion argument. They still haven't explained why this exhaustion argument wasn't obvious on the face of the complaint from the beginning and wasn't raised at the beginning.

I would also like to point out that our desire to get consent to file an amended complaint was because we took over for a pro se litigant who had filed a handwritten complaint that needed necessarily some cleaning up to conform with some of the claims that were obvious on the face of the complaint, but now that appointed counsel was involved in the case, we were able to sort of make that more clear.

I should also add that we – meaning Mayer Brown – were not involved in the case until after the expiration of the statute of limitations. So, even had we recognized, as counsel suggests, that exhaustion was going to be an issue when we got involved, we still would be in the same situation that were in now with respect to the fact that were the case to be dismissed, we wouldn't be able to refile because of the statute of limitations.

THE COURT: Ms. Meloy mentioned that she doesn't think there's any authority to stay.

MR. CLAFFEE: Well, Your Honor, we did cite a case from [30] the Fourth Circuit that is after the amendments to the PLRA. It is not a PERA case. So, defendant Ross may have a good point in that a stay is not available, but we do submit that although the Fourth Circuit has not addressed equitable tolling, that is an avenue available to Your Honor. Its within the court's discretion to order this case – that the statute be equitably tolled while dismissing the case without prejudice for Blake to be able to go and exhaust the IGO process, and although there's no Fourth Circuit authority on that, we do cite from a case called Clifford in the Fifth Circuit, and in a footnote to our motion for reconsideration, page 23 in footnote 15, there are some other cases from other circuits and courts that have held that it is appropriate in light of the fact that this would dispose of all avenues for relief to a prisoner in a 1983 case were the statute to be applied without any sort of tolling.

THE COURT: All right.

MR. CLAFFEE: Thank you, Your Honor.

THE COURT: All right. I tell you what I'm going to do. I'm going to think about this a little more. I've got to probably clean up my opinion certainly in a footnote that you let us know that the 2008 regulation clearly was not applicable at the time of the 2007 acts. I've got to address that. And, quite candidly, Mr. Sachse, I don't see how I'm going to not decide to reinstate the case as to your client. I think everyone agrees here that plaintiff did not get notice, and even

[31] if I were to sua sponte make a decision on exhaustion as a defense, quite candidly – and I'll review the record again – but I don't think there's been any indication by you or your client that you were going to rely on that as a defense. I think its waived. I really do.

MR. SACHSE: Your Honor, I was just going to say you wouldn't even have to review the record.

THE COURT: What's that?

MR. SACHSE: You wouldn't even have to review the record. We did –

THE COURT: Its just not in there? Okay. Its not there. So, as I said, I'm going to again rewrite the opinion, but I'm pretty sure that I'm going to – at least at this juncture I'm pretty sure I'm going to reinstate the case certainly as to your client.

I must admit I did not really think about the lack or the failure to give proper notice or the need to give proper notice to the plaintiff. It just didn't cross my mind at the time, and that's a violation that's been brought to the attention of Mr. Claffee. So, we can't rectify that, and even though in general my thinking at the time was that the failure to exhaust certainly is something viable with Ms. Meloy's client, again, it wasn't raised by you, has not been raised, still has not been raised, and after so many years and months of this case, I just don't think it's something that has not been [32] waived. So, I just wanted to let you know

that's probably the direction that I'm going there for Mr. Sachse's client.

I have to think about the other issues here that Mr. Claffee and Ms. Meloy have raised. They're good arguments. I'll think about it again. I'm not going to spend a whole lot of time keeping the case. I'm going to make a decision quickly, particularly since the administrative process is kind of waiting for a decision here. I think its probably going to come down to whether I think there's any equitable tolling here. So I'll have to look at that issue again.

I still have a view, Mr. Claffee – I'll tell you that now. I'm going to listen to your arguments again. I took good notes. But I still have a view that whether you were looking at the handbook or whether you're looking at the 2005 regulation, I just think there's an obligation on his part to exhaust. But, as I said, you've made some decent arguments. I'll take a look at it. And I don't see any reason for me at this point to not have allowed the amended defense here. I made a decision then. I thought it was fair then and I've looked at all the considerations and I also already addressed the motion to strike. So, I'm not sure you've made a decent case at this time for me to go back on those. But I will take a look at the exhaustion issue here. And I agree with Ms. Meloy here. I don't think there's any real authority for me to be staying cases and so forth.

[33] So, these are just some comments that I've made. It's not written in stone. I'm going to rewrite

my opinion as soon as I can and I'll issue something there. Okay.

MR. CLAFFEE: Thank you.

THE COURT: All right. Thank you.

MS. MELOY: Thank you, Your Honor. Always a please.

THE COURT: Yes, Ms. Meloy.

MS. MELOY: So nice to be back in front of you.

MR. SACHSE: Thank you, Your Honor.

(Proceedings adjourned at 4:55 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

SHAIDON BLAKE,	*	
Plaintiff,	*	
vs.	*	Case No.
GARY MAYNARD, et al.,	*	09-cv-2367-AW
Defendants.	*	

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MEMORANDUM OPINION

(Filed July 11, 2013)

Plaintiff Shaidon Blake filed suit against Defendant James Madigan and a host of others alleging the excessive use of force after Plaintiff was punched multiple times by Madigan. The suit was brought under 42 U.S.C. § 1983. At trial, the jury found Madigan liable and ordered that Madigan pay Plaintiff $50,000 in compensatory damages. There are currently two pending motions: Plaintiff's Motion for Attorney Fees, Doc. No. 138, and Madigan's Motion for New Trial or, in the Alternative, Motion to Alter or Amend the Judgment. Doc. No. 139. For the following reasons, the Court will **GRANT** Plaintiff's Motion for Attorney Fees and **DENY** Madigan's Motion for New Trial.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Shaidon Blake is an inmate in the Maryland Department of Corrections. Blake accused James Madigan, a correctional officer, of punching him in the face several times with a "fist clenched over a key ring." Blake pursued a 42 U.S.C. § 1983 claim against Madigan, and the case proceeded to trial. At trial, while Blake did not call a medical expert, Blake himself testified of the significant pain and suffering that he incurred as a result of Defendant's actions. He also offered several medical records. After hearing this evidence, the jury found Madigan liable on Blake's § 1983 claim, and awarded Blake $50,000 in compensatory damages.

The Parties have filed two post-verdict motions. The Plaintiff filed a Motion for Attorney Fees, Doc. No. 138, while the Defendant has filed a Motion for New Trial or, in the Alternative, Motion to Alter or Amend the Judgment, Doc. No. 139.

II. ANALYSIS

A. Plaintiff's Motion for Attorney Fees

Under 42 U.S.C. § 1988(b), a prevailing plaintiff in a § 1983 suit may receive "a reasonable attorney's fee." "A court's award of reasonable attorneys' fees is the product of the reasonable hours expended multiplied by a reasonable hourly rate." *Sutton v. Smith*, No. Civ.A. AW-98-2111, 2001 WL 743201, at *1 (D. Md. June 26, 2001). This Court has considered twelve

factors in determining the reasonableness of this product:

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Id.

The Prison Litigation Reform Act of 1995 (PLRA) places limitations on the attorney fees that can be awarded in cases brought by prisoners. The PLRA stipulates that the fee must have been "directly and reasonably incurred in proving an actual violation of the plaintiff's rights," and that "the amount of the fee is proportionately related to the court ordered relief for the violation." 42 U.S.C. § 1997e(d). Section 1997e further provides that an award of attorney fees may not exceed 150% of the judgment. 42 U.S.C. § 1997e(d)(2). Additionally, a calculation of attorney fees may not "be based on an hourly rate greater than

150 percent of the hourly rate established under 3006A of Title 18 for payment of court-appointed counsel." 42 U.S.C. § 1997e(d)(3). The current rate of compensation in the District of Maryland is $125 per hour. *See* CJA Hourly Rates, http://www.mdd.uscourts.gov/publications/forms/CJARates.pdf.

Plaintiff submits evidence that Mayer Brown attorneys worked 2,187 hours on this case at varying rates, all of which exceed the statutory maximum of $187.50 per hour. Doc. No. 138-2. In accruing these hours, Plaintiff argues that his counsel had to review years of medical evidence, take a number of depositions, consult a medical expert, and prepare for and conduct trial. Doc. No. 138-1, at 3. Multiplying the number of hours worked by the statutory maximum, Plaintiff submits that his attorneys would be entitled to $410,062.50 in fees were it not for the statutory cap on attorney fees at 150% of the judgment. Consequently, Plaintiff asks for the full $75,000, which is 150% of Plaintiff's $50,000 judgment. Noting the substantial amount of work performed by Plaintiff's counsel, the Court grants Plaintiff the statutory maximum of $75,000 in attorney fees.

The PLRA also provides that a Court must order that a portion of the attorney fees come out of the plaintiff's judgment. 42 U.S.C. § 1997e(d)(2). This portion may not exceed 25% of the judgment. *Id.* The Court may exercise discretion in determining the amount of the judgment that gets directed toward attorney fees. *See Sutton*, 2001 WL 743201, at *2. In the past, when the conduct of the officer has been

egregious, this Court has directed $1.00 of the judgment toward attorney fees and has required the defendant to pay the remainder. *See id.*

Because of the egregious conduct of the Defendant, the Court orders that $1.00 of Plaintiff's attorney fees be taken from Plaintiff's judgment. At trial, the jury found that Defendant "maliciously and sadistically" violated Plaintiff's constitutional rights by punching him several times in the face and throwing him to the ground, causing his head to hit the concrete floor with substantial force. Such egregious behavior requires that only a nominal amount of Plaintiff's judgment be used to pay his attorney fees. *See Sutton*, 2001 WL 743201, at *2. Hence, the Court orders attorney fees to be paid to Plaintiff's counsel in the amount of $75,000, with $1.00 to be paid from Plaintiff's judgment, and the remainder to be paid by Defendant.

Defendant has a number of objections, all of which are meritless. First, Defendant contends that he is destitute and therefore cannot afford to pay Plaintiff's attorney fees. However, he cites no legal authority that uses the means of the defendant as a measuring stick for awarding attorney fees. Wealth, or lack thereof, of the defendant is not listed as one of the twelve factors used to determine a reasonable attorney fee. *See id.* at *1. Moreover, "plaintiffs in civil rights actions shall ordinarily receive fees and costs as long as no special circumstances render such an award unjust. The district court has limited discretion in not awarding fees to a prevailing party."

Clark v. Sims, 894 F. Supp. 868, 870 (D. Md. 1995) (citations omitted). Defendant has asserted no special circumstance compelling the Court to exercise its limited discretion. For this same reason, we also find no merit in Defendant's argument that his counsel spent less time and fewer resources preparing for trial. That his counsel was unwilling or unable to do as much as Plaintiff's counsel does not create a special circumstance rendering it unjust to award attorney fees to Plaintiff.

Third, Defendant argues that most of the time used by Plaintiff's attorneys was spent dealing with claims against defendants other than Madigan. However, by the time Mayer Brown was appointed, all defendants other than Madigan and Michael Ross had been dismissed from the case. Doc. Nos. 3, 33, 38. Plaintiff points out that much of Mayer Brown's work was related to factual discovery, and the factual discovery performed to pursue the case against Madigan is largely indistinguishable from the factual discovery taken to pursue the case against Ross. Moreover, because Ross was dismissed from the case prior to trial, all of Mayer Brown's trial preparation was focused solely on the case against Madigan. However, as the Fourth Circuit has explained,

> It is often quite difficult to separate the hours worked "on a claim-by-claim basis" when "plaintiff's claims for relief involve a common core of facts or [are] based on related legal theories." When this is the case, the chief consideration becomes "the

> significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." When the results have been "excellent," the award should encompass "all hours reasonably expended on the litigation."

Knussman v. Maryland, 73 F. App'x 608, 614 (4th Cir. 2003) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 435-36 (1983)). There is no dispute that Plaintiff received excellent results, and Defendant has put forward no evidence or argument that Plaintiff's counsel acted unreasonably. Hence, the Court declines to lower its award of attorney fees to Plaintiff.

Fourth, Defendant asserts that Madigan's cooperation made it easy for Plaintiff to prevail and helped the trial run smoothly. That the costs of the litigation would have been even higher had Defendant not cooperated does not give the Court a reason to deny Plaintiff attorney fees for the costs that were actually incurred. Moreover, even if the Court accepted Defendant's arguments as factually true, they would not justify a reduction in the attorney fees owed to Plaintiff. Plaintiff's attorney fees, using the maximum statutory rate, were over $400,000; Plaintiff is seeking to recover only a fraction of that amount. Even accounting for Defendant's financial circumstances and cooperation, and the possibility that time was spent pursuing litigation against other defendants, the Court would not reduce Plaintiff's attorney fees below the $75,000 threshold.

2. Defendant's Motion for New Trial or, in the Alternative, Motion to Alter or Amend the Judgment

Defendant has filed a motion asking the Court to amend the judgment and impose a verdict of nominal damages to the Plaintiff or, in the alternative, to grant a new trial. Doc. No. 139. The motion focuses entirely on the fact that the Plaintiff did not call a medical expert to demonstrate that the Defendant's conduct caused Plaintiff's injury. For the sake of clarity and exhaustion, the Court will presume that Defendant is moving both for a new trial under Rule 59 and, in the alternative, for a judgment as a matter of law pursuant to Rule 50.

Defendant's motion fails on the merits.[1] Under Rule 50, the Court must enter judgment for Defendant if "a reasonable jury would not have a legally sufficient evidentiary basis to find for" Plaintiff Fed. R. Civ. P. 50(a)(1). "In ruling on a motion for judgment as a matter of law, the trial court should consider the record as a whole viewing the evidence presented in the light most favorable to the party against whom the motion is made." *Bostron v. Apfel*, 104 F. Supp. 2d 548, 551 (D. Md. 2000). "The court must draw all reasonable inferences in the nonmovant's favor without

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[1] Plaintiff argues that Defendant did not properly preserve this motion. The Court, absent a full trial transcript, is not in a position to evaluate this argument. Nonetheless, the Court need not evaluate Defendant's preservation of the motion as the motion fails on the merits.

weighing the evidence or assessing the witness' credibility." *Pathways Psychosocial v. Town of Leonardtown, Md*, 223 F. Supp. 2d 699, 706 (D. Md. 2002).

On the other hand, under Rule 59,

> a district court must[ ] set aside the verdict and grant a new trial if (1) the verdict is against the clear weight of the evidence, or (2) is based upon evidence which is false, or (3) will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict.

Id. In applying this standard, "[c]ourts do not grant new trials unless it is reasonably clear that prejudicial error has crept into the record or that substantial justice has not been done." *Id.* (alteration in original) (internal quotation marks omitted). "In general reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Pac. Ins. Co. v. Am. Nat. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (citation and internal quotation marks omitted).

The Defendant's Motion fails under both Rule 50's "legally sufficient evidentiary basis" standard and Rule 59's "clear weight of the evidence" standard. The jury had more than sufficient evidence to conclude that Plaintiff was entitled to $50,000 in damages. "Compensatory damages may include not only out-of-pocket loss and other monetary harms, but also such injuries as impairment of reputation

personal humiliation, and mental anguish and suffering." *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986) (citation and internal quotation marks omitted). Here, Plaintiff provided testimony of his suffering, explaining that his "face was swollen up from being hit with a metal key chain like with the effect of brass knuckles." Doc. No. 142, at 74:6-10. He also explained that he suffered from headaches after the beating. *Id.* Further, Plaintiff testified that he was constantly in pain for two weeks after the incident and that he still has headaches and pain to this day. *Id.* at 78:8-11, 81:3-6. Moreover, he explained that he has complained of headaches at every correctional facility he has been to, and that he was prescribed Neurontin to counteract the headaches. *Id.* at 131:25-135:22. While he had been prescribed Neurontin before, he testified that he was prescribed much higher doses after Madigan's attack. *Id.* Plaintiff testified that he is currently taking the highest dosage of Neurontin that he has ever received. *Id.* Finally, Plaintiff submitted several exhibits of medical records detailing the pain he experienced after Madigan's attack. *See* Doc. No. 128, Plaintiff's Exhibit List.

Defendant argues that this evidence is insufficient as a matter of law because Plaintiff did not call a medical expert to explain that his injuries were linked to Defendant's actions. However, no such expert was required:

> There are many occasions where the causal connection between a defendant's negligence

> and a disability claimed by a plaintiff does not need to be established by expert testimony. This is particularly true when the disability develops coincidentally with, or within a reasonable time after, the negligent act, or where the causal connection is clearly apparent from the illness itself and the circumstances surrounding it, or where the cause of the injury relates to matters of common experience, knowledge or observation.

Osunde v. Lewis, 281 F.R.D. 250, 261 (D. Md. 2012) (citations and quotation marks omitted). Here, Plaintiff's testimony indicates that he suffered from pain and headaches after he was repeatedly struck on the head by Defendant. It is plain to this Court that the "causal connection is clearly apparent" from Plaintiff's injury. Moreover, suffering from significant pain and headaches after being repeatedly struck in the head is so obvious that it can be considered a matter of common experience, knowledge, or observation. Hence, no medical testimony was necessary to establish the causal link between Defendant's acts and Plaintiff's injury.

The lack of medical testimony offered by Plaintiff is the sole basis for Defendant's motion. Because this argument is meritless, the Court will deny Defendant's motion. The Court is satisfied that Plaintiff's testimony and medical records demonstrate that the verdict was not against the weight of the evidence under Rule 59, and that they provided a legally sufficient basis for the verdict under Rule 50.

III. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Attorney Fees will be GRANTED, and Defendant's Motion for New Trial or, in the Alternative, Motion to Alter or Amend the Judgment will be DENIED. A separate Order follows.

July 10, 2013
Date

/s/
Alexander Williams, Jr.
United States District Judge

[United States Court of Appeals for the Fourth Circuit, Excerpts of Joint Appendix, filed March 14, 2014]

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

[SEAL] **DIVISION OF CORRECTION DIRECTIVE**	**PROGRAM: ADMINISTRATIVE REMEDY PROCEDURE**
	DCD #: 185-002
	TITLE: Administrative Remedy Procedure Policy
	ISSUED: February 15, 2005
	AUTHORITY: /s/ Patricia Allen ASSISTANT COMMISSIONER
	APPROVED: /s/ F C. Sizer, Jr. COMMISSIONER

I. REFERENCES:
A. DCDs 175-2, 185-101, 185-204, 185-402
B. MCCS Standard .05 I.
C. ACA Standard 4-4284

II. APPLICABLE TO: All Division of Correction inmates housed in Division of Correction Facilities

III. PURPOSE: To establish policy for the operation and management of the Administrative Remedy Procedure.

IV. POLICY:

A. Staff and inmates of the Division of Correction are encouraged to make a good faith

effort to resolve all institutionally related inmate complaints at the lowest possible level. Inmates are encouraged, but not required, to seek resolution of complaints through the informal resolution process.

B. Inmates may seek formal resolution through the Administrative Remedy Procedure.

C. Inmates may seek relief through the Administrative Remedy Procedure for issues that include but are not limited to:

1. Institutional policies and procedures;
2. Medical services;
3. Access to courts;
4. Religious liberties;
5. Lost, damaged, stolen, destroyed, or improperly confiscated property;
6. Use of force;
7 Rejection of unopened inmate to inmate correspondence;
8. Institutional conditions affecting health, safety, and welfare; and
9. Administration and operation of the Administrative Remedy Procedure.

D. Inmates may not seek relief through the Administrative Remedy Procedure on the following issues:

1. Classification recommendations and decisions;
2. Maryland Parole Commission procedures and decisions;
3. Disciplinary hearing procedures and decisions; and
4. Appeals of decisions to withhold mail.

E. Inmates may submit a request for Administrative Remedy concerning the rejection of any **unopened** inmate to inmate correspondence. However, any inmate-to-inmate correspondence that is returned to an inmate **opened**, the inmate must follow the established policy and procedures regarding the withholding of mail

F. Every inmate, regardless of physical condition, security level, administrative status, language barrier, or housing is entitled to submit a complaint for resolution through the Administrative Remedy Procedure on those issues which qualify.

G. If an inmate has reason to believe that there would be an adverse effect if the complaint became known at the institution, the request may be addressed directly to the Commissioner. When a request is submitted directly to the Commissioner, the inmate shall provide a written explanation for not submitting the request to the warden.

H. The Division of Correction does not approve and will not allow formal or informal disciplinary actions to be sanctioned against inmates who use the Administrative Remedy Procedure in good faith.

I. Inmates may use the Administrative Remedy Procedure to pursue complaints of formal or informal reprisals against them. When such complaints are found to have merit, the warden shall take appropriate disciplinary

action in accordance with Division of Correction directives and personnel guidelines.

J. Inmates are restricted from filing complaints on behalf of other inmates or from filing class action complaints. However, a member of the executive body of a recognized inmate organization may submit a complaint on behalf of the organization concerning a rule or other issue that affects the entire organization.

K. The transfer of an inmate to another institution does not terminate the administrative remedy process.

L. If an inmate submits a Request for Administrative Remedy or Headquarters Appeal of Administrative Remedy Response and is released prior to the issuance of the response, the case shall be dismissed as moot, with the exception of cases concerning monetary complaints, property complaints, and complaints concerning sentence computation and diminution of confinement.

M. Inmates may submit any number of requests at one time; however, each complaint shall be submitted on a separate request form and shall be a separate issue.

N. All requests and appeals shall be submitted in the name under which the inmate is committed to the custody of the Commissioner of Correction. An inmate may, however, include a religious name or a name authorized by court order as an AKA.

O. Inmates may use institutional courier mail systems to send requests or appeals. However, the Division of Correction will bear no responsibility for delivery dates exceeding applicable time frames. Unless indigent, as defined by DCD 175-2, inmates are encouraged to affix proper postage and use the U.S. Postal Service when sending requests or appeals outside of the institution.

P. Staff shall process administrative remedy requests and appeals consistent with the time frames established in DCD 185-101.

Q. The Headquarters coordinator shall redirect requests for administrative remedy that are improperly addressed to the Commissioner to the appropriate warden, with the exception of adverse effect requests.

R. If an inmate initially submits a complaint that is subject to this procedure to the Inmate Grievance Office, that office may either require the inmate to exhaust the Administrative Remedy Procedure or accept the grievance. If the Inmate Grievance Office requires the inmate to exhaust the Administrative Remedy Procedure, that office will notify the inmate of this requirement in writing and will send a copy of the notification to the institutional administrative remedy coordinator. Within fifteen days of the date of this notification, the inmate may submit a Request for Administrative Remedy, and the time frame established in DCD 185-101 shall be set aside.

S. If an inmate submits a complaint directly to a state or federal court, the court will be invited to refer the complaint or grievance to the Division of Correction for handling through the Administrative Remedy Procedure. However, this will not apply in cases where the complaint submitted to a state court is a final appeal of an inmate grievance decision. When a federal or state court refers a matter to the Division of Correction for handling under the Administrative Remedy Procedure, the Division of Correction will, upon receipt, refer the matter to the warden for review in accordance with DCD 185-204. The time frame established in DCD 185-101 shall be set aside.

T. Inmates who no longer wish to actively pursue a complaint through the Administrative Remedy Procedure may elect to withdraw their requests in accordance with the procedures established in DCD 185-402.

U. This series of directives establishes policy and procedure for the operation of the Administrative Remedy Procedure throughout the Division of Correction. No institutional/unit directives are required for its implementation.

V. RESCISSION: DCD 185-002, dated April 1, 1993

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STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

[SEAL] DIVISION OF CORRECTION DIRECTIVE	**PROGRAM: ADMINISTRATIVE REMEDY PROCEDURE**
	DCD #: 185-003
	TITLE: Definitions
	ISSUED: April 1, 1993
	APPROVED: /s/ [Illegible] COMMISSIONER

I. REFERENCES: DCD 185-100, Administrative Remedy Procedure Description
DCD 185-101, Time Frames

II. PURPOSE: To define terms as used throughout this series of directives as they apply to the Administrative Remedy Procedure.

III. DEFINITIONS:

Administrative Remedy Procedure: a mechanism for the resolution of inmate complaints for inmates housed within Division of Correction facilities.

Administrative dismissal: a disposition of a request or appeal for administrative reasons (such as timeliness, sufficiency of information, completeness, or a determination that the complaint is frivolous or malicious) without consideration of the merit of the complaint.

Administrative remedy coordinator: an employee designated by the commissioner or warden or their designee to receive, acknowledge, and direct the investigation of complaints and to maintain all records relating to the procedure.

Adverse effect request: a request for administrative remedy submitted directly to the commissioner due to the complainant's belief that knowledge of the complaint at the institution would result in irreparable harm to the complainant.

Appeal:

1. to bring from a lower level to a higher level for consideration or judgment;
2. the second step of the formal complaint resolution process or Administrative Remedy Procedure;
3. DC Form 185-100cR, Headquarters Appeal of Administrative Remedy Response, Appendix 4 to DCD 185-100.

Appeal of untimely response: an appeal sent to the commissioner due to the warden's failure to issue a response to a Request of Administrative Remedy within the proper time frame.

ARP: Administrative Remedy Procedure.

Department liaison: an institutional departmental supervisor designated by the warden to serve as an investigator of administrative remedy requests and/or to delegate such investigations to departmental staff.

Dismiss: to find without merit; to deny based on the issues.

Emergency request: an administrative remedy request submitted due to an unforeseen combination of circumstances which may threaten the health, safety, or welfare of an inmate and which calls for immediate action.

Exhaust: to take complete advantage of; to use up completely.

Extension: an increase in the length of response time by agreement.

Formal resolution: to seek a written judgement or decision and relief from the warden or commissioner regarding an institutionally related complaint.

Frivolous: a complaint which is not serious or practical in content or form; a complaint submitted for mere purposes of delay and/or embarrassment.

Informal resolution: to seek a written judgement or decision and relief directly from institutional staff regarding an institutionally related complaint.

Malicious: a complaint characterized by wicked, spiteful, or mischievous intentions or motives; a complaint submitted to accomplish some end which the administrative remedy process was not designed to accomplish and does not arise from a regular use of the process.

Meritorious: relief fully granted; to be found completely in favor of.

Meritorious in part: relief partially granted; to be found in favor of some but not all.

Misdirect: to address incorrectly; to send to the wrong person or place.

Moot: had been resolved or no longer capable of resolution.

Relief: redress; correction of error; compensation; that which is specifically requested as relief.

Reprisal: any action taken by inmate or staff either out of spite or in retaliation for submitting a complaint through the Administrative Remedy Procedure.

Request:

1. the initial step of the formal complaint resolution process;
2. DC Form 185-100b, Request for Administrative Remedy, Appendix 3 185-100.

Time frame: the period of time during which a specific step of the Administrative Remedy Procedure must occur as established in DCD 185-101, Time Frames.

Withdraw: to rescind an administrative remedy request; to arrest or stop the processing of an administrative remedy request prior to response.

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STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

[SEAL] DIVISION OF CORRECTION DIRECTIVE	**PROGRAM: ADMINISTRATIVE REMEDY PROCEDURE**
	DCD #: 185-205
	TITLE: Administrative Dismissal of a Request
	ISSUED: April 1, 1993
	APPROVED: /s/ [Illegible] COMMISSIONER

I. REFERENCES: DCD 185-002, Policy
DCD 185-003, Definitions
DCD 185-100, Administrative Remedy Procedure Description
DCD 185-101, Time Frames
DCD 185-600, Documentation and Reporting

II. PURPOSE: To establish the criteria and procedure for the administrative dismissal of a request for administrative remedy.

III. PROCEDURE:

A. Within five working days of the date received, the institutional administrative remedy coordinator shall:

1. assign a case number to the request for administrative remedy in accordance with the procedures in DCD 185-600;

2. index the request in accordance with the procedures in DCD 185-600; and

3. review the request for administrative dismissal or acceptance and investigation.

B. Administrative Dismissal (Pending Resubmission)

1. The institutional coordinator will administratively dismiss the request pending resubmission when the inmate had failed to properly complete all sections of the request for administrative remedy, DC Form 185-100bR.

a. The institutional coordinator will:

1) provide in the receipt portion, Part C, the reason(s) why the request is incomplete;

2) provide specific instructions for the inmate to properly complete the request for administrative remedy and the specific date by which the inmate may submit the request to the warden; and

3) return the request and a blank request for administrative remedy to the inmate.

b. Failure by the inmate to resubmit the request in accordance with the instructions will result in a final administrative dismissal.

2. The institutional coordinator will administratively dismiss a request pending resubmission when the inmate had failed to provide sufficient information or specific information within the complaint essential for the completion of its investigation.

   a. The institutional coordinator will:

      1) provide in the receipt portion, part C, the reason(s) why the request is not sufficient;

      2) provide specific instructions for the inmate to correct the insufficiency and the specific date by which the inmate may resubmit the request to the warden; and

      3) return the request and a blank request for administrative remedy to the inmate.

   b. Failure by the inmate to resubmit the request in accordance with the instructions will result in a final administrative dismissal.

C. Administrative Dismissal (Final)

1. The warden will administratively dismiss a request for administrative remedy when the request had been determined to be frivolous and/or malicious. The warden will:

   a. provide in the response port, Part B., the rationale for dismissal;

b. sign and date Part B; and

c. forward the request to the institutional coordinator to be indexed, copied, and distributed in accordance with Section III.E. of this directive.

2. The institutional coordinator will administratively dismiss a request for administrative remedy received regarding any of the following issues:

a. case management recommendations and decisions;

b. Maryland Parole Commission procedures and decisions;

c. Adjustment hearing procedures and decisions; and

d. Appeals of notices of decision to withhold mail.

3. The institutional coordinator will administratively dismiss a request when the inmate has failed to submit the request within the time frame established in DCD 185-101. The institutional coordinator may, as necessary, refer such cases to appropriate institutional staff for evaluation and follow-up outside of the administrative remedy procedure.

4. The institutional coordinator will administratively dismiss a request for administrative remedy when the inmate had failed to resubmit and insufficient or

incomplete request in accordance with the coordinator's instructions.

4. The institutional coordinator will administratively dismiss a request when the inmate's complaint is:

   a. one which had been previously resolved; or

   b. repetitive or had been previously addressed through the administrative remedy procedure.

D. When a request is administratively dismissed by the coordinator, the coordinator will:

1. provide in the receipt portion, Part C, the rationale for dismissal; and

2. sign and date part C.

E. The coordinator shall return any request which is administratively dismissed to the inmate on the date the request is indexed and reviewed and ensure that the completed request for administrative remedy is distributed as follows:

1. original and two copies to the inmate; and

2. one copy to the administrative remedy file maintained by the coordinator.

F. A final administrative dismissal of a request by the warden or institutional coordinator will be treated as a substantive decision and

the rationale for dismissal may be appealed by the inmate.

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STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

[SEAL] **DIVISION OF CORRECTION DIRECTIVE**	**PROGRAM: ADMINISTRATIVE REMEDY PROCEDURE**
	DCD #: 185-205
	TITLE: Administrative Dismissal of a Request
	ISSUED: April 1, 1993
	APPROVED: /s/ [Illegible] **COMMISSIONER**

DCD CHANGE NOTICE 12-98
EFFECTIVE DATE March 6, 1998

CHANGE # 1 TO THIS DCD

1. The following is added as Section III.C.6.:

III.C.6. The institutional coordinator will administrative dismiss any request in excess of the monthly limit not processed as an emergency.

2. Please incorporate this change into all copies of this DCD.

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STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

[SEAL] **DIVISION OF CORRECTION DIRECTIVE**	**PROGRAM: ADMINISTRATIVE REMEDY PROCEDURE**
	DCD #: 185-002
	TITLE: Administrative Remedy Policy
	ISSUED: August 4, 2008
	EFFECTIVE: August 27, 2008
	AUTHORITY: /s/ Paul B. O'Flaherty **Paul O'Flaherty** **Assistant Commissioner**
	APPROVED: /s/ J. Michael Stouffer **J. Michael Stouffer** **Commissioner**

I. References:

A. Suits by Prisoners, 42 U.S.C.§ 1997e(a)
B. Correctional Services Article, §§ 10-201 through 10-210, Annotated Code of Maryland
C. Courts and Judicial Proceedings Article, §§ 5-1001 through 5-1007, Annotated Code of Maryland

D. COMAR 12.02.27 and COMAR 12.07.01.
E. DCD 175-2 and 250-1

II. Applicable to: All Division of Correction inmates housed in Division of Correction institutions and facilities

III. Purpose: To establish policy for the operation and management of the Administrative Remedy Procedure (ARP).

IV. Definition: Administrative Remedy Procedure means the procedure established by the Commissioner of Correction for inmate complaint resolution.

V. Policy:

A. The Division of Correction encourages staff and inmates to make a good faith effort to resolve all institutionally related inmate complaints at the lowest possible level. Inmates are encouraged, but not required, to seek resolution of complaints through the informal resolution process. Inmates may seek formal resolution through the Administrative Remedy Procedure.

B. Formal resolution under the Administrative Remedy Procedure consists of two levels:

1. Filing a request for administrative remedy with the Warden, and

2. Appealing to the Commissioner, if not satisfied with the response.

C. An inmate not satisfied with the outcome of the Administrative Remedy Procedure Process may seek further administrative review in accordance with regulations of the Inmate Grievance Office (IGO).

D. The purposes of the Administrative Remedy Procedure are to solve inmate problems and to be responsive to inmate concerns. When the Division of Correction finds that a request for administrative remedy or an appeal is meritorious in whole or in part, the Administrative Remedy Procedure, to the extent possible, should provide the inmate with meaningful relief.

E. It is the policy of the Division of Correction that requests for administrative remedy and appeals under the Administrative Remedy Procedure should be answered on the merits and substantive relief provided to the inmate where warranted. Nevertheless, inmates must adhere to the time periods and other requirements set forth in this Directive and should not expect that any late submission will be considered.

VI. Procedures:

A. Inmates may seek relief through the Administrative Remedy Procedure for issues that include, but are not limited to:

1. Division of Correction and institutional policies and procedures;

2. Medical services;

3. Access to courts;

4. Religious liberties;

5. Lost, damaged, stolen, destroyed, or improperly confiscated property;

6. Use of force;

7 Sentence computation and diminution of confinement;

8. Institutional conditions affecting health, safety, and welfare; and

9. Administration and operation of this procedure.

B. Inmates may not seek relief through the Administrative Remedy Procedure on the following issues:

1. Case management recommendations and decisions;

2. Maryland Parole Commission procedures and decisions;

3. Disciplinary hearing procedures and decisions; and

4. Decisions to withhold mail.

C. Inmates may seek relief concerning case management recommendations and decisions both through informal resolution and under IGO regulations. Disciplinary hearing decisions may be appealed under a wholly separate procedure in accordance with COMAR 12.02.27, applicable DPSCS directives, and

under IGO regulations. Under no circumstances should inmates use the Administrative Remedy Procedure to raise any issue concerning disciplinary hearing procedures and decisions. Decisions to withhold mail may be appealed pursuant to DCD 250-1.

D. Every inmate in the Division of Correction, regardless of physical condition, security level, administrative status, language barrier or housing assignment is entitled to submit a request for administrative remedy on those issues that qualify, and to appeal to the Commissioner if not satisfied with the response. If asked, wardens and staff shall ensure that assistance in filing requests for administrative remedy and appeals under the Administrative Remedy Procedure is available to inmates who are disabled or who are not functionally literate in English. Wardens shall ensure that the proper forms for using the Administrative Remedy Procedure are readily available in all housing units.

E. Inmates are responsible for using the Administrative Remedy Procedure in good faith and in an honest and straightforward manner. When filing a request for administrative remedy or an appeal, inmates should briefly and clearly state the facts giving rise to the complaint and the relief requested.

F. The Division of Correction will not allow any retaliation to be taken against inmates who use the Administrative Remedy Procedure in good faith. Inmates may use the Administrative

Remedy Procedure to pursue complaints of any retaliation against them. When a claim of retaliation is confirmed, the Warden shall take appropriate action in accordance with Department of Public Safety and Correctional Services standards of conduct.

G. Inmates may not file request for administrative remedy or appeals on behalf of other inmates, staff, or other third persons (such as visitors). Inmates are also restricted from filing class action complaints under this Directive.

H. All requests for administrative remedy and appeals to the Commissioner shall be submitted in the name under which the inmate is committed to the custody of the Commissioner of Correction and shall include the inmate's identification number. An innate may also include a religious name or name authorized by court order.

I. The transfer of an inmate does not terminate the administrative remedy process, although transfer of an inmate may be relevant to any relief. An inmate who is transferred after an incident but prior to filing a request for administrative remedy shall submit the request to the Warden of the inmate's current institution, within the appropriate time period.

J. Except as provided in Section VI.K of this Directive, inmates may submit any number of requests for administrative remedy on

issues that qualify under the Administrative Remedy Procedure.

K. The Commissioner of Correction may limit the number of requests an inmate may file if the inmate has misused the Administrative Remedy Procedure by filing requests that are frivolous, unnecessarily duplicative, or which contain threatening, obscene or abusive language or material.

1. The Warden shall make a written recommendation to the Commissioner regarding the number of requests to which the inmate should be limited and the duration of the limitation using the Administrative Remedy Procedure Limitation Request, Appendix 1 to this Directive. The recommendation must provide a compelling reason for the limitation. The Warden's responsibilities under this section may be delegated only to an Assistant Warden.

2. The Commissioner shall review the recommendation to limit an inmate's use of the Administrative Remedy Procedure and respond in writing by approval or disapproval of the recommendation. The Commissioner's responsibilities under this section may only be delegated to an Assistant Commissioner.

3. An inmate may appeal a decision by the Commissioner to limit the number of administrative remedy requests to the IGO. Any appeal must be received by the

IGO within 30 days of the date the inmate receives the Commissioner's decision.

4. The Warden may dismiss any requests for administrative remedy that exceed the limit approved by the Commissioner. Regardless of any dismissal, staff shall investigate and take appropriate action on any issue in a request if failure to do so could result in serious harm.

L. Time Periods and Filing Procedures at the Institutional Level:

1. An inmate may, at any time, attempt informal resolution of a complaint, using both correspondence and discussion with staff, as well as the Informal Inmate Complaint Form, Appendix 2 to this Directive.

2. Inmates are encouraged to use informal resolution, but attempting informal resolution does not suspend or stay the deadline for filing a formal request for administrative remedy or any other time period.

3. An inmate must date, sign, and submit Request for Administrative Remedy, Appendix 3 to this Directive, within the later of:

a. Thirty (30) calendar days of the date on which the incident occurred; or

b. Thirty (30) calendar days of the date the inmate first gained knowledge of the incident or injury giving rise to the complaint.

4. Wardens should recognize that certain complaints may be ongoing in nature and therefore not always subject to a strict application of this time period. For example, the heating system in an inmate's housing unit has been malfunctioning for over 60 days. However, the weather has been unseasonably warm and the inmate has not complained because he or she has not been cold. The weather suddenly changes and now the inmate is cold and consequently complains about the malfunctioning heating system.

5. Requests for administrative remedy concerning sentence computation and diminution of confinement are not subject to the 30-day time period. Although this type of request may be filed at any time, inmates are encouraged to submit a request concerning sentence computation and diminution of confinement as soon as the inmate becomes aware of the problem. Appeals to the Commissioner of Correction concerning sentence computation and diminution of confinement must be filed within the time period set forth in Section VI.M.1 of this Directive.

6. When extraordinary circumstances prevent an inmate from submitting a request for administrative remedy within the 30-day time period, the Warden may accept a late filing.

7. The inmate shall describe a single complaint or a reasonable number of closely related issues on the request form. "Closely related issues" are those that arise out of a single occurrence or condition. For example, an inmate seeking both medical attention and monetary damages due to a claim of excessive force is clearly raising two closely related issues.

8. The inmate shall clearly and briefly state the facts giving rise to the complaint so that the basis for investigation can be determined. The necessary facts include:

   a. The date and location of the occurrence;

   b. The names(s) of staff involved;

   c. The name(s) of any witnesses;

   d. A brief statement of the facts; and,

   e. A brief statement of the relief requested.

9. If the inmate includes more than one issue in a single request for administrative remedy and the issues are not closely related or does not provide sufficient information to determine the basis

for investigation, the Warden may dismiss the request for procedural reasons.

a. If the Warden dismisses a request because the complaint contains multiple unrelated issues or does not provide sufficient information to determine the basis for investigation, the inmate may resubmit a request containing a single issue, or a reasonable number of closely related issues, or may resubmit with additional information needed to determine the basis for investigation.

b. The inmate must resubmit the request within the original time period or within 15 days of the date of dismissal, whichever is later.

c. Regardless of any dismissal, staff shall investigate and take appropriate action on any issue in a request for administrative remedy if failure to do so could result in serious harm.

10. The inmate shall submit the request for administrative remedy to an officer in the control center of the inmate's housing unit, a tier officer, or a custody supervisor. The officer who receives a request for administrative remedy must sign and date the form and provide the inmate with the carbonless copy of the request. The officer who receives a request for administrative remedy must

deliver the request to the location designated by the Warden by the end of that officer's shift.

11. Within five business days of the date the inmate submits a request for administrative remedy, the Warden shall provide the inmate with a receipt and case number. Inmates are responsible for keeping the carbonless copy of the request for administrative remedy and any receipts. These documents are needed in the event of further proceedings.

12. The Warden shall investigate and respond to all requests for administrative remedy within 30 calendar days of the date of submission of the request for administrative remedy.

    a. The Warden is permitted one extension of 15 calendar days to respond to a request for administrative remedy. The inmate's consent to the extension is not required.

    b. If the Warden extends the time to respond, the Warden must provide written notice of the extension using the Extension Form, Appendix 4 to this Directive. The completed form must be sent to the inmate within the original 30 days.

13. An inmate may withdraw a request for administrative remedy at any time. An inmate who withdraws a request for

administrative remedy shall submit the withdrawal using the Withdrawal Form, Appendix 5 to this Directive. Withdrawal of the request may prevent consideration of the claim at a higher level.

14. By separate Directive, the Commissioner shall establish standards for the investigation of requests for administrative remedy and preparing responses, as well as the duties of wardens and institutional administrative remedy coordinators.

15. Regardless of any dismissal for procedural reasons, staff shall investigate and take appropriate action on any issue in a request for administrative remedy if failure to do so could result in serious harm.

16. The Warden shall promptly provide to the inmate any relief ordered in response to a request for administrative remedy or appeal.

17 If the Warden fails to respond to a request for administrative remedy within 30 calendar days of the date the request is submitted or within 45 calendar days of the date the request is submitted, if an extension is required by the Warden under Section VI.L.12.a of this Directive, the request for administrative remedy is considered denied and the inmate may appeal to the Commissioner of Correction.

M. Time Periods and Filing Procedures for Appeals:

1. All appeals to the Commissioner of Correction must be dated, signed and submitted, using the Headquarters Appeal of Administrative Remedy Response, Appendix 6 to this Directive, so that the appeal is received by the Commissioner's Office within 30 calendar days of the date the imitate receives the Warden's response, or within 30 calendar days of the date the response from the Warden was due.

   Appeals concerning sentence computation and diminution of confinement are included within this time period.

2. Unless indigent as defined by DCD 175-2, inmates are encouraged to affix proper postage and use the United States Postal Service when submitting an appeal. Inmates may also use institutional courier mail systems to submit appeals. If an institutional courier system is used, the Division of Correction has no responsibility for delivery dates exceeding the applicable time period.

3. When extraordinary circumstances prevent an inmate from submitting an appeal so that it is received by the Commissioner's Office within the 30-day time period, the Commissioner may accept a late filing.

4. An inmate may appeal to the Commissioner even if the Warden finds the complaint meritorious in whole or in part, for example, if the inmate is dissatisfied with the relief ordered by the Warden.

5. When any appeal is received by the Commissioner, the headquarters administrative remedy coordinator shall, within five business days of the date the appeal was received, send the inmate Part C of the appeal notifying the inmate of the date the appeal was received.

6. The Commissioner shall investigate and respond to all appeals within 30 calendar days of the date the appeal is received, unless an extension is required under Section VI.M.9.b of this Directive.

7 The Commissioner's investigation of an appeal is not limited by any investigation conducted by the Warden. When responding to an appeal, the Commissioner is not limited to affirming or reversing the Warden's decision. The Commissioner may take any action in response to an appeal that is consistent with the major purposes of the Administrative Remedy Procedure.

8. A failure by the Warden to respond to a request for administrative remedy in a timely manner does not prevent the Commissioner from responding to an

appeal on any basis that was available to the Warden.

9. If the inmate appeals to the Commissioner after the Warden has failed to respond in a timely manner, the Commissioner may direct the Warden to investigate the complaint and prepare a recommended response to the appeal for the Commissioner to review.

   a. The Warden shall investigate and prepare a recommended response to the appeal on behalf of the Commissioner and provide the Commissioner with the recommended response within 15 calendar days of the date of the Commissioner's order, or earlier if required by the Commissioner.

   b. If the Warden is directed to investigate and prepare a recommended response on behalf of the Commissioner, the Commissioner is permitted one extension of 15 calendar days to respond to the appeal. The inmate's consent to the extension is not required.

   c. If the Commissioner extends the time to respond to an appeal, the Commissioner must provide written notice to the inmate using the Extension Form, Appendix 4 to this directive within the original 30 days.

d. The Commissioner may accept or reject the Warden's recommended response, substitute the Commissioner's response, or take any action consistent with the purposes of the Administrative Remedy Procedure, except remanding to the Warden for further proceedings at the institutional level.

10. If the inmate appeals to the Commissioner after the Warden has failed to respond in a timely manner, and the inmate subsequently receives a response from the Warden concerning the same request for administrative remedy, the Warden shall also provide the Commissioner with a copy of the untimely response.

    a. The inmate may withdraw the appeal using the Withdrawal Form, Appendix 5 to this Directive if the inmate is satisfied with the Warden's response, even though the response was not timely.

    b. If the inmate is not satisfied with the Warden's response, the inmate may continue with the appeal.

    c. If the inmate continues with the appeal, no further action is required by the inmate. The inmate may but is not required to supplement the appeal based on the Warden's response.

11. Any request for administrative remedy submitted directly to the Commissioner without first being submitted to the Warden shall be referred by the Commissioner to the Warden.

    a. The Commissioner shall refer a request for administrative remedy submitted directly to the Commissioner within 30 calendar days of the date the request is received by the Commissioner. The referral shall include the date the request was received.

    b. The Commissioner shall provide written notice of the referral to the inmate within 30 calendar days of the date the request was received by the Commissioner. The inmate's consent to the referral is not required.

    c. In the event of such a referral, the Warden shall provide the inmate with a receipt using Part C of the request within five business days of receiving the referral and shall respond to the inmate within 30 calendar days of the date the Warden receives the referral.

    d. If an extension of 15 calendar days to respond to a referral is required, the Warden shall provide the inmate with written notice within 30 calendar days of the date the Warden

received the referral using the Extension Form, Appendix 4 to this Directive. The inmate's consent to the extension is not required.

e. In all respects, the referral shall he treated as if it were an original request for administrative remedy, except that no referral by the Commissioner shall be dismissed by the Warden for lack of timeliness if the original request was received by the Commissioner within 30 calendar days of the date of the incident or within 30 calendar days of the date the inmate gained knowledge of the incident or injury giving rise to the complaint, whichever is later.

f. Regardless of any referral, headquarters staff shall investigate and take appropriate action on any issue in a request for administrative remedy submitted directly to the Commissioner if failure to do so could result in serious harm.

12. By separate Directive, the Commissioner shall establish standards for the investigation of appeals and preparing responses to appeals, and the duties of the headquarters administrative remedy coordinator.

13. Regardless of any dismissal of an appeal for procedural or other reasons, headquarters staff shall investigate and take

appropriate action on any issue in an appeal if failure to do so could result in serious harm.

14. If the Commissioner fails to respond to an appeal within 30 calendar days of the date the Commissioner receives the appeal, or 45 calendar days of the date received if an extension is required under Section VI.M.9.b of this Directive, the appeal is considered denied, and the inmate may seek further administrative review under regulations of the IGO.

N. Regulations of the Inmate Grievance Office (IGO) include the following:

1. COMAR 12.07.01.06B provides: "An appeal from the administrative remedy procedure to the Inmate Grievance Office shall be filed within 30 days from the grievant's receipt of a response from the Commissioner [of Correction], or within 30 days of the date the Commissioner's response was due."

2. COMAR 12.07.01.06E provides: "The Inmate Grievance Office may dismiss any disciplinary proceeding appeal and any grievance within the scope of the administrative remedy procedure that has not been exhausted through all institutional remedies in a timely manner."

3. COMAR 12.07.01.06F provides: "A time limitation or procedural bar may be waived [by the Inmate Grievance Office]

for a grievance which represents a continuing problem or for which good cause is shown for a failure to proceed in a timely manner."

4. COMAR 12.07.01.07A provides: "The Executive Director shall conduct a preliminary review of a grievance to determine whether it should be dismissed or proceed to a hearing."

5. COMAR 12.07.01.07B(4) provides: "A grievance shall be dismissed on preliminary review as wholly lacking in merit if

> [t]he grievant has failed to exhaust remedies available under the administrative remedy procedure or the disciplinary proceeding in a timely manner, and has not shown good cause for the failure to do so."

O. In the Courts of the State of Maryland, judicial review of final decisions in matters before the IGO is available pursuant to Correctional Services Article, § 10-210.

1. The inmate may seek judicial review of a final decision in matters before the IGO in the Circuit Court of the County in which the inmate is confined. Correctional Services Article, § 10-210(b)(2).

2. Courts and Judicial Proceedings Article, § 5-1003(a)(1) provides: "A prisoner may not maintain a civil action until the

prisoner has fully exhausted all administrative remedies for resolving the complaint or grievance."

P. Federal law, 42 U.S.C. § 1997e(a) provides: "No action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Q. This series of Directives establishes policy and procedure for the operation of the Administrative Remedy Procedure throughout the Division of Correction.

R. The institutional administrative remedy coordinator or designee shall complete the Policy Management Audit Form, Appendix 7 to this Directive in June and December of each calendar year. When deficiencies are noted, a compliance plan shall be completed to address each deficiency. A copy of the completed form(s) shall be forwarded to the:

1. Institutional audit coordinator; and
2. Director, Office of Policy Development, Analysis and Management

The institutional administrative remedy coordinator or designee shall maintain a copy of the form for review during the Headquarters Administrative Remedy Audit.

S. No institutional directives are required or permitted.

VII. Attachments:

A. Appendix 1, Administrative Remedy Procedure Limitation Request (DOC Form 185-002aR)
B. Appendix 2, Informal Inmate Complaint Form (DOC Form 185-002bR)
C. Appendix 3, Request for Administrative Remedy (DOC Form 185-002c)
D. Appendix 4, Extension Form (DOC Form 185-002dR)
E. Appendix 5, Withdrawal Form (DOC Form 185-002eR)
F. Appendix 6, Headquarters Appeal of Administrative Remedy Response (DOC Form 185-002fR)
G. Appendix 7, Policy Management Audit Form (DOC Form 1-2aR) and Policy Management Compliance Plan (DOC Form 1-2bR)

VIII. Rescissions:

185-001: Table of Contents, dated April 1, 1993
185-002: Administrative Remedy Procedure Policy, dated February 15, 2005
185-100: Administrative Remedy Procedure Description, dated April 1, 1993
185-101: Time Frames, dated April 1, 1993
185-200: Institution Program Orientation and Management, dated April 1, 1993
185-201: Inmate Orientation, dated April 1, 1993
185-202: Staff Awareness, dated April 1, 1993
185-203: Informal Resolution Procedure, dated April 1, 1993
185-204: Preliminary Review of a Request for Administrative Remedy, dated April 1, 1993

185-205: Administrative Dismissal of a Request, dated April 1, 1993
185-206: Acceptance and Investigation of a Request for Administrative Remedy, dated April 1, 1993
185-207: Warden's Response to a Request for Administrative Remedy, dated April 1, 1993
185-208: Providing Relief to a Request for Administrative Remedy, dated April 1, 1993
185-300: Headquarters Program Organization and Management, dated April 1, 1993
185-301: Administrative Dismissal of an Appeal, dated April 1, 1993
185-302: Acceptance and Investigation of a Headquarters Appeal of Administrative Remedy Response, dated April 1, 1993
185-303: Commissioner's Response to a Headquarters Appeal of Administrative Remedy Response, dated April 1, 1993
185-304: Providing Relief to the Inmate, dated April 1, 1993
185-305: Adverse Effect Request, dated April 1, 1993
185-400: Program Description of Procedures for Inmates, dated April 1, 1993
185-401: Submitting a Complaint for Informal Resolution, dated April 1, 1993
185-402: Submitting a Request for Administrative Remedy, dated April 1, 1993
185-403: Submitting a Headquarters Appeal of Administrative Remedy Response, dated April 1, 1993
185-500: Professional Training and Development, dated April 1, 1993

185-600: Documentation and Reporting, dated April 1, 1993
185-700: Audits, dated April 1, 1993

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STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

[SEAL] **DIVISION OF CORRECTION DIRECTIVE**	**PROGRAM: ADMINISTRATIVE REMEDY PROCEDURE**
	DCD #: 185-003
	TITLE: Institutional Administrative Remedy Procedures
	ISSUED: August 27, 2008
	EFFECTIVE: August 27, 2008
	AUTHORITY: /s/ Paul B. O'Flaherty **Paul O'Flaherty** **Assistant Commissioner**
	APPROVED: /s/ J. Michael Stouffer **J. Michael Stouffer** **Commissioner**

I. References:

A. Suits by Prisoners, 42 U.S.C.§ 1997e(a)
B. Correctional Services Article, §§ 10-201 through 10-210, Annotated Code of Maryland
C. Courts and Judicial Proceedings Article, §§ 5-1001 through 5-1007, Annotated Code of Maryland

D. COMAR 12.02.27 and COMAR 12.07.01.
E. DCD 175-2 and 250-1

II. Applicable to: All Division of Correction (DOC) inmates housed in DOC institutions and facilities and all DOC staff.

III. Purpose: To establish procedure for wardens and institutional staff to implement policy as stated in DCD 185-002.

IV. Definition: None.

V. Policy: It is the policy of the Division of Correction that:

A. Staff and inmates shall be encouraged to make a good faith effort to resolve all institutionally related inmate complaints at the lowest possible level.

B. Inmates shall seek formal resolution initially through the Administrative Remedy Procedure when attempts at informal resolution fail or are not pursued.

C. Inmates shall adhere to the time periods and other requirements set forth in this Directive and should not expect that any late submission will be considered.

D. Requests for administrative remedy and appeals under the Administrative Remedy Procedure be answered on the merits and that substantive relief be provided to the inmate when warranted.

VI. Procedures:

A. Warden

1. The warden is responsible for the operation of the administrative remedy procedure at the institutional level and for ensuring institutional compliance.

2. The warden shall:

a. Designate a correctional case management specialist, supervisor, manager, or correctional officer as the institutional administrative remedy coordinator and designate an alternate to function as coordinator in the coordinator's absence;

b. Designate one supervisor within each department (who shall be referred to as the departmental liaison throughout this series of directives) to serve as an investigator and/or to delegate investigations to departmental staff (this includes the medical department);

c. Ensure that all inmates and staff are aware of the administrative remedy procedure;

d. Encourage the use of the informal resolution process by staff and inmates to resolve inmate complaints at the lowest possible level by directing staff to actively participate

in the resolution of inmate complaints;

e. Respond to all complaints within the prescribed time frame; and

f. Manage the institution's compliance with the administrative remedy directives through the institutional coordinator.

B. Administrative Remedy Coordinator (ARC)

1. The administrative remedy coordinator is responsible for managing the operation of the administrative remedy procedure within the institution.

2. The coordinator shall:

a. Process all formal complaints submitted through the administrative remedy procedure;

b. Ensure that all institutional staff responsibilities for administrative remedy are completed consistent with established procedures;

c. Report to the warden any noncompliance with procedures which affect the ability to meet established time frames;

d. Ensure the availability of all appropriate administrative remedy forms to all inmates by supplying these forms to the case management

department, housing unit officers, and the inmate library;

e. Make appropriate accommodations for any inmate who is not proficient in the English language so that the inmate has access to the ARP process; and

f. Process all complaints consistent with the procedures and time frames established in the administrative remedy DCDs.

C. Department Liaisons

1. Department liaisons shall be the administrative remedy coordinator's point of contact for all investigations related to that department.

2. Department liaisons may choose to either conduct the investigations themselves or assign the complaint to an employee in that department for investigation.

D. Investigators

1. Investigators shall investigate each case assigned to them in accordance with the procedures established in this directive utilizing the Administrative Remedy Procedure Case Summary, Appendix 1 to this directive.

2. Investigators shall be responsible and accountable for submitting completed

investigations back to the ARC by the due date.

E. Preliminary Review of an Administrative Remedy Procedure (ARP) Request

1. The warden or the institutional coordinator shall conduct a preliminary review of each request for administrative remedy to determine if the inmate's complaint concerns an emergency request or if the complaint is frivolous or malicious.

2. If is determined that the complaint concerns an emergency request, all regular time limits and procedural requirements shall be set aside and the warden or designee shall, without further substantive review of the request:

   a. Accelerate the investigative process;

   b. Direct immediate corrective action; and/or

   c. Notify the institutional health care provider of any medical complaints that are determined to be emergencies.

3. If the warden determines that the complaint is frivolous or malicious, the warden shall:

   a. Complete Part B of Appendix 3 to DCD 185-002,

b. Indicate that the request is dismissed for procedural reasons final as frivolous or malicious or both;

c. Forward the request to the institutional coordinator to be indexed, copied, and distributed; and

d. Review the request to determine if the inmate properly completed an ARP request as required by DCD 185-002.

4. If the inmate fails to properly complete the ARP request and if this failure is vital to determining the inmate's interest or basis for the investigation, the ARC shall dismiss the complaint for procedural reasons pending resubmission.

5. Inmates are encouraged but not required to list the steps taken to resolve their complaint informally and a complaint should not be dismissed for procedural reasons pending resubmission to obtain this information.

F. Resubmitting a Request

1. If the institutional coordinator has dismissed a request for procedural reasons as insufficient or incomplete and issued instructions for resubmitting the request, the inmate may resubmit the request to the warden, one time only, by:

a. Completing a new Request for Administrative Remedy; and

b. Following the specific instructions provided by the institutional coordinator in the receipt portion of Part C (Appendix 3 to DCD 185-002) of the Request for Administrative Remedy.

2. Failure to resubmit the request in accordance with the coordinator's instructions shall result in a dismissal for procedural reasons final of the request which is subject to non-concurrence by the headquarters coordinator.

G. Inmates shall submit their request for administrative remedy to an officer in the control center of the inmate's housing unit, a tier officer, or a custody supervisor. The request will be processed by the officer in accordance with the instructions in DCD 185-002.

H. The warden may issue an Institutional Bulletin (IB) designating a location to which officers shall deliver the requests.

1. The IB may designate a time and place for inmates to submit their requests.

2. The warden shall ensure that all inmates have at least a daily opportunity to turn in their requests.

3. The requests shall be stamped daily either by staff assigned to the Warden's office or the institutional coordinator. The time frame for indexing starts from the stamp date.

I. The warden's time frame for responding to a request starts from the date that the officer signs the request.

J. An inmate may, for any reason, withdraw a complaint by submitting to the institutional or headquarters coordinator a completed Withdrawal Form, Appendix 5 to DCD 185-002. The coordinator shall ensure that:

1. The Withdrawal Form is included in the ARP file; and

2. The inmate is offered a copy.

K. Indexing and Assigning Case Numbers

1. The administrative remedy coordinator shall maintain the Administrative Remedy Index, Appendix 2 to this directive, to record requests for administrative remedy within five working days of the date stamp on the request. The coordinator shall ensure that:

a. The index is maintained electronically with the ability to search for requests by year, inmate name, subject code, and disposition code.

b. A new index form is used at the beginning of each calendar month. Enter the institution, month, and year at the top of the form.

c. Each request received is assigned a case number consisting of the institution's initials followed by a four digit sequential number followed by

the last two digits of the year. The four digit number shall begin at 0001 and return to that number on January 1 of each year. (Example: MCTC-0001-08 would be the number for the first request received by the institutional coordinator of the Maryland Correctional Training Center for the calendar year 2008).

d. Each case which is resubmitted in accordance with the coordinator's instructions retains the assigned case number.

e. Each case that is returned from the headquarters coordinator due to a non-concurrence of the institutional coordinator's rationale for a dismissal for procedural reasons retains the assigned case number and is investigated.

2. The first five columns should be completed as the request or appeal is indexed.

a. The first column shall contain the assigned case number.

b. The second column shall contain the inmate's name

c. The third column shall contain the inmate's DOC number.

d. The fourth column shall contain the date of the month on which the complaint was indexed.

e. The fifth column, if applicable, shall contain either:

(1) The number code "5" from the disposition codes indicating that a request has been dismissed for procedural reasons pending resubmission; or

(2) The number code "7" indicating that the case has been returned for investigation due to a non-concur of a dismissal for procedural reasons by the Headquarters Coordinator.

(3) Column five shall also contain the date on which the resubmitted request is indexed and accepted or the date the non-concur is indexed and accepted.

f. Column six shall contain the subject code(s) identifying the nature of the complaint. Codes are provided on the reverse side of the index form. The coordinator is responsible for establishing which code is the most appropriate. No more than two subject codes may be entered in this column.

g. The remaining index entries shall be completed as follows:

(1) Column seven shall contain the date of the month on which the warden or commissioner signed the response or the date that the request was dismissed for procedural reasons by the institutional coordinator.

(2) Column eight shall either contain the date that the inmate signed the receipt of Warden's response or shall contain the date that the dismissal for procedural reasons by the institutional coordinator was mailed to the inmate.

(3) Column nine shall contain a one-digit number from the coding sheet located on the back of the index indicating the disposition of the complaint.

(4) Column ten is for the entry of a brief description of the inmate's complaint, the reason for the dismissal for procedural reasons of the complaint, or the date that the resubmitted request is due.

h. Each line of the index form shall be used through the last entry on the last date of the month.

i. By the tenth working day of each month, a copy of the previous month's

index shall be electronically mailed to the headquarters administrative remedy office.

j. The coordinator shall ensure that the index is properly updated as dispositions are rendered in previously unresolved cases.

k. When dispositions have been made for all cases indexed for the month, a copy of the completed index shall be electronically mailed to the headquarters coordinator.

L. Administrative Remedy Procedure Files

1. The administrative remedy coordinator shall maintain a centralized file with a copy of each closed administrative remedy request or appeal with any investigative findings or documentation attached.

a. Files shall be maintained chronologically by month and year in the order indexed. A copy of the monthly index shall be kept in the front of each file separating each new month as a directory to the file's contents.

b. Files from the previous year may be stored or archived on January 1st of the following year. For example, all 2006 files shall be stored or archived effective January 1, 2007 The files shall be stored by year in order of case number with a copy of that year's index in the front. The files

shall be kept for at least four years following the final disposition of the request and then shall be destroyed.

2. The Warden may authorize these files to be stored electronically provided these files are recoverable should the institution's computers fail.

M. Quarterly Reports

1. Institutional coordinators shall accumulate aggregate data regarding the number and types of requests by subject code heading as listed on the reverse side of the index form using the Request for Administrative Remedy Quarterly Report, Appendix 3 to this directive.

2. Reports of the data are to be maintained by the institutional coordinator and available upon request or in the event of an audit.

N. Dismissal of a Request for Procedural Reasons

1. The institutional coordinator shall dismiss the request for procedural reasons pending resubmission when the inmate has failed to properly complete all sections of the request or when the inmate has failed to provide sufficient information or specific information within the complaint essential for the completion of its investigation. (Note: A request without an officer's signature is considered

incomplete.) The institutional coordinator shall:

a. Provide in the receipt portion, Part C (Appendix 3 to DCD 185-002), the reason(s) why the request is incomplete;

b Provide specific instructions for the inmate to properly complete the request for administrative remedy;

c. Provide the specific due date of the resubmitted request which is the later of 15 calendar days from dismissal or within the original 30 day time frame; and

d. Return the request and a blank request for administrative remedy to the inmate and keep one copy for the file.

2. Failure by the inmate to resubmit the request in accordance with the coordinator's instructions or failure to resubmit by the due date given shall result in a final dismissal for procedural reasons at the institutional coordinator's discretion subject to non-concurrence by the headquarters coordinator.

a. If the inmate fails to resubmit the request, the disposition date in column seven of the index shall be the date that the resubmission was due.

b. If the resubmission is received after the due date, the disposition date is still the date that the resubmission was due, but the date that the late resubmission is received shall be noted in column ten.

3. The institutional coordinator shall:

a. Accept a late filing or take appropriate action outside of the ARP process for good cause if failure to do so could result in serious harm.

b. Issue a final dismissal of a request for procedural reasons when the request is regarding any of the following issues:

(1) Case management recommendations and decisions;

(2) Maryland Parole Commission procedures and decisions;

(3) Adjustment hearing procedures and decisions; and

(4) Appeals of notices of decision withhold mail.

c. Issue a final dismissal of a request for procedural reasons when the inmate has failed to submit the request within the proper time frame unless the inmate establishes that extraordinary circumstances prevented the inmate from filing the request in a timely manner. The

institutional coordinator may, as necessary, refer dismissed cases to appropriate institutional staff for evaluation and follow-up outside of the administrative remedy procedure.

d. Issue a final dismissal of a request for procedural reasons when the inmate's complaint is one which has been previously resolved, is repetitive, or had been previously addressed through the administrative remedy procedure. The coordinator shall note the case number of the request that previously addressed the same issue.

e. Issue a final dismissal of a request for procedural reasons when the request is in excess of that inmate's monthly limit as established by the Commissioner of Correction.

4. The Warden or institutional coordinator shall issue a final dismissal of a request for procedural reasons when it has been determined that the basis of the complaint is the same basis of an investigation under the authority of the Internal Investigative Unit (IIU).

a. The dismissal must refer to IIU's case number.

b. The response shall read: "Your request is dismissed for procedural

reasons final. This issue is being investigated by IIU, case number: ___. Since this case shall be investigated by IIU, no further action shall be taken within the ARP process."

5. When a request is dismissed for procedural reasons by the coordinator, the coordinator shall:

   a. Provide in the receipt portion, Part C (Appendix 3 to DCD 185-002), the rationale for the dismissal for procedural reasons; and

   b. Sign and date part C (Appendix 3 to DCD 185-002).

6. The coordinator shall return any request which is dismissed for procedural reasons to the inmate on the date the request is indexed and reviewed and ensure that the completed dismissed request for administrative remedy is distributed as follows:

   a. Original and one copy to the inmate; and

   b. One copy to the administrative remedy file maintained by the coordinator.

7 A final dismissal for procedural reasons of a request by the warden or institutional coordinator shall be treated as a substantive decision and the rationale

for dismissal may be appealed by the inmate.

O. Accepting and Investigating a Request for Administrative Remedy

1. The institutional coordinator shall accept requests which are not dismissed for procedural reasons for investigation and response.

2. On the date the request is indexed, the coordinator shall:

   a. Send the receipt portion, Part C (Appendix 3 to DCD 185-002), of the request for administrative remedy to the inmate;

   b. Review each request to determine the nature of the complaint and the departmental liaison(s) to whom the investigation should be assigned; and

   c. Assign the request to the departmental liaison(s) for investigation within 20 calendar days or less.

3. For cross-over cases:

   a. The coordinator of the indexing institution shall send the original request to the coordinator of the institution where the basis for the complaint occurred and shall retain a copy for the file.

b. The receiving institutional coordinator shall assign the case to the applicable department liaison(s).

c. The institution where the incident occurred shall be responsible for investigating the request; and

d. The Warden of that institution shall be responsible for responding to the request.

e. The original Warden's response, case summary, and supporting documentation shall then be forwarded to the indexing institution so that that coordinator can update the index and ensure that the request is distributed to the inmate.

f. Both institutions shall maintain an ARP file on the case.

4. Upon receipt, the departmental liaison(s) shall either investigate the request or assign the request to a staff person within that department for investigation.

5. One or more employees may participate in the investigation of a complaint, provided there is no conflict of interest.

a. If a case is assigned to an employee who believes that participation in the investigation would be a conflict of interest, that employee must notify the departmental liaison and substantiate that conflict.

b. If the departmental liaison determines that there is a conflict of interest, the departmental liaison shall then assign the investigation to a different employee.

6. The assigned investigator shall, at a minimum, complete each of the following steps and document that completion on the Administrative Remedy Procedure Case Summary, Appendix 1 to this directive. Instructions for completing the case summary are as follows:

   a. Conduct Interviews: Absent good cause, all relevant persons must be interviewed to establish the basis of the inmate's complaint and the chronology of the events. Relevant persons are:

      (1) The inmate;

      (2) All relevant witnesses named by the inmate; and

      (3) All relevant employees, including medical staff.

   b. If the person interviewed is a staff member, that person shall provide a written report of the facts absent good cause (such as being out on extended leave).

   c. If the complaint is one which involves a situation affecting a group of inmates and interviews of the

complainants would disrupt institutional security, operations, or schedules, no interviews shall be required. However, the reason for the lack of interviews must be documented in writing on the Administrative Remedy Procedure Case Summary, Appendix 1 to this Directive.

d. At the Maryland Correctional Adjustment Center and at the North Branch Correctional Institution, interviews of complainants and relevant inmate witnesses may be conducted via the intercom system to accommodate security requirements. However, personal contact interviews must be conducted, absent good cause, if the intercom is inoperable at the time of the interviews.

7 Establish the Specific Findings of Fact

a. All reports submitted regarding the case shall be reviewed by the investigator.

b. Based on the testimony of witnesses and the information contained in the reports submitted, the investigator shall establish and list any actions or events in the order of their occurrence and shall list any additional facts in the case.

8. Review All Relevant Documents

   a. The investigator shall review all relevant directives, institutional directives, bulletins, etc., to establish that all actions were taken in accordance with current policy and procedure.

   b. Any supporting document must be included in the ARP file.

9. Make a Recommendation

   a. The investigator shall make a recommendation for a finding of meritorious, meritorious in part, or dismissal and shall draft a suitable response for the coordinator's review.

   b. The assigned investigator shall submit to the departmental liaison all findings, recommendations, and supporting documentation for return to the institutional coordinator within the time frame specified.

10. The coordinator shall review the investigation for completion of all investigative steps, sufficiency of documentation, and application of all relevant directives, etc., and review the recommendation and draft a response.

11. Investigations which are found by the coordinator to be incomplete or insufficient or in which the recommendations

are not supported by investigative material shall be returned to the investigator with specific instructions for reinvestigation and resubmission.

12. All investigative reports and reinvestigations must be submitted within the time frame.

13. Upon the withdrawal of a request by an inmate the coordinator shall:

    a Notify the appropriate departmental liaison to halt the investigation of the request; and

    b. Document the disposition of the case on the index.

14. If it is found that thirty calendar days is insufficient to complete the investigation and respond to the inmate's request, the Warden is permitted one extension of fifteen (15) calendar days.

    a. The inmate's consent to the extension is not required.

    b. The Warden or designee shall provide written notification, using the Extension Form (Appendix 4 to DCD 185-002), to the inmate regarding the 15 day extension within the original 30 day timeframe.

    c. A copy of the extension form shall be maintained in the ARP file.

15. Upon receipt of the completed case summary from the departmental liaison, the coordinator shall prepare an appropriate response for the warden's review and signature in Part B (Appendix 3 to DCD 185-002) of the Request for Administrative Remedy. The prepared response shall be based upon:

    a. The case summary;

    b. Documents and reports attached; and

    c. The investigator's recommended response.

16. The response should:

    a. Address fully all issues and allegations raised in the complaint;

    b. Be easily understood;

    c. State clearly the facts upon which the decision is based; and

    d. The first sentence of the warden's response should clearly state the disposition of the inmate's complaint as:

        (1) Meritorious;

        (2) Meritorious in part; or

        (3) Dismissed, as defined in DCD 185-001.

17. The warden shall review the response to ensure that the complaint has been satisfactorily resolved and that the response is appropriate.

    a. If the above criteria have been met, the warden shall sign the response in the space provided in Part B (Appendix 3 to DCD 185-002) of the Request for Administrative Remedy; or

    b. If the above criteria have not been met to the warden's satisfaction, the warden shall return all information to the coordinator for either:

        (1) A reinvestigation for additional information; or

        (2) A revised response.

18. The institutional coordinator shall ensure that the completed Request for Administrative Remedy is distributed as follows:

    a. Original and one copy to the inmate; and

    b. One copy to the administrative remedy file maintained by the coordinator.

19. The inmate shall sign and date the Receipt of Warden's Response, Appendix 4 to this directive, upon delivery of the response.

a. One copy of the receipt is issued to the inmate; and

b. One copy of the receipt is forwarded to the institutional coordinator to be maintained in the institutional ARP file. This date shall be noted in column eight of the index.

20. The inmate may appeal the warden's decision in accordance with policy as stated in the 185 series.

P. Meritorious or Meritorious in Part Cases

1. When the disposition of an administrative remedy request is meritorious or meritorious in part and relief specified in the warden's response has not been fully provided to the inmate at the time of the response, the warden shall clearly instruct appropriate staff, in writing, to:

a. Provide the relief specified; and

b. Provide written documentation of the relief provided to the institutional coordinator.

2. The warden may also initiate a change in institutional policy or procedure, if deemed appropriate, as a provision of relief or make a recommendation to the Commissioner or designee for a change in division policy or procedure and acknowledge this action in the response.

3. The warden shall ensure that:

   a. Staff provides full relief, as specified in the warden's response; and

   b. Staff provides documentation of that relief within ten calendar days of the date of the response.

4. The institutional coordinator shall monitor meritorious or meritorious in part cases for compliance by maintaining active cases in a separate location from the dismissed cases or the closed meritorious or meritorious in part cases by:

   a. Filing such cases chronologically, by calendar due date which shall always be ten calendar days from the date of the warden's response;

   b. Monitoring the file on no less than a weekly basis for staff compliance;

   c. Notifying the warden when staff fails to provide the relief specified within the proper time frame; and

   d. Placing the documentation of the relief provided in the administrative remedy file upon receipt.

5. When relief is provided, the case shall be considered closed and filed in accordance with this directive.

6. When the relief includes monetary reimbursement for property, the value of the property at the time of loss should be

calculated utilizing Appendix 3 to DCD 220-008.

7 The inmate should then be presented with the reimbursement value of the property and be asked to sign Appendix 1 to DCD 220-008 which shall indicate whether or not the inmate accepts the settlement.

8. If the inmate accepts the settlement, the money should be placed in the inmate's institutional money account under the authority of the Warden and without the review process described in DCD 220-008.

9. For purposes of appeal, if the inmate accepts the settlement offered the amount is considered to be correct and all issues in that request are considered settled.

10. If the inmate refuses to accept the settlement, that fact shall be documented on Appendix 1 to DCD 220-008 and that form shall be placed in the ARP file. That case is considered closed and no money shall be placed in the inmate's account. The inmate may appeal to the Commissioner within the proper time frame.

11. If at the time of Warden's response, the inmate has already refused settlement, the Warden shall:

    a. State that the request is meritorious in part;

b. List the property that the Warden agrees was lost or damaged due to staff negligence;

c. State what amount was offered to the inmate; and

d. State that no money shall be deposited into the inmate's account due to the inmate's refusal to accept settlement.

Q. Inmate Orientation

1. The Introduction to the Administrative Remedy Procedure, Appendix 5 to this DCD shall be read during the orientation of all newly arriving inmates at MRDCC, MCI-W, and all maintaining institutions.

2. All wardens shall ensure that the Introduction to the Administrative Remedy Procedure is incorporated into the institutional inmate handbooks.

R. Staff Awareness

1. The warden shall mandate that all new employees be given and sign for the Administrative Remedy Procedure Fact Sheet for New Employees, Appendix 6 to this directive, about the administrative remedy process.

2. The fact sheet shall be maintained in the employee's personnel file kept by the institution.

VII. Attachments:

A. Appendix 1, Administrative Remedy Procedure Case Summary, DOC Form 185-003aR

B. Appendix 2, Administrative Remedy Index, DOC Form 185-003bR

C. Appendix 3, Request for Administrative Remedy Quarterly Report, DOC Form 185-003cR

D. Appendix 4, Receipt of Warden's Response, DOC Form 185-003d

E. Appendix 5, Introduction to the Administrative Remedy Procedure

F. Appendix 6, Administrative Remedy Procedure Fact Sheet for New Employees

G. Appendix 7, Policy Management Audit Form (DOC Form 1-2aR)

H. Appendix 8, Policy Management Compliance Plan (DOC Form 1-2bR)

VIII. Rescissions: None.

Distribution: A
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